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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations.

Accordingly, chapters I and II of the present volume—the ninth of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1971. Decisions given by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

Decisions, recommendations and reports of a legal character which, in the view of the organization concerned, merited reproduction in whole or in part are contained in chapter III. Other documents under this category are simply enumerated in bibliographical form in chapter IX.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question, whether or not they entered into force in that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon entry into force.

The index in chapter IX is designed to provide, together with the texts reproduced in chapter III, as complete a picture as possible of the legal documentation of the United Nations and related intergovernmental organizations. A part of the index has been set aside for each of the organizations, which were requested to present their own documentation in the manner they thought best suited to the material.

Finally, the bibliography in chapter X lists works and articles of a legal character published in 1971 regardless of the period to which they refer. Some works and articles which were not included in the bibliographies of the *Juridical Yearbook* for previous years have also been listed.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

ABBREVIATIONS

BANK IBRD	International Bank for Reconstruction and Development
BIRPI	United International Bureaux for the Protection of Intellectual Property
CERN	European Organization for Nuclear Research
ECAFE	Economic Commission for Asia and the Far East
ECE	Economic Commission for Europe
FAO	Food and Agriculture Organization of the United Nations
FUND IMF	International Monetary Fund
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
IDA	International Development Association
IFC	International Financial Corporation
ILO	International Labour Organisation
IMCO	Inter-governmental Maritime Consultative Organization
ITU	International Telecommunication Union
OAS	Organization of American States
OPAS	Operational Assistance
OUA	Organization of African Unity
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peace-keeping Force in Cyprus
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UPU	Universal Postal Union
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

1. Argentina

LAW PROHIBITING THE USE OF THE EMBLEM, OFFICIAL SEAL AND NAME OF THE UNITED NATIONS WITHOUT AUTHORIZATION BY THE SECRETARY-GENERAL OF THE ORGANIZATION [1]

In exercise of the powers conferred by article 5 of the Statute of the Argentine Revolution,

The Commander-in-Chief of the Air Force, acting in performance of the office of the Presidency of the nation, proclaims and promulgates with the force of law:

Article 1. The use of the emblem, official seal and name of the United Nations without prior authorization by the Secretary-General of that Organization shall be prohibited throughout the territory of the Republic.

Article 2. This law shall be made known, published, transmitted to the Central Office of the Official Registry and deposited in the archives.

REY
Ismael E. BRUNO QUIJANO

---

2. Brazil

NOTE DATED 26 JUNE 1972 FROM PERMANENT REPRESENTATIVE OF BRAZIL TO THE UNITED NATIONS

. . .

3. As to measures relating to the legal status or privileges and immunities of the specialized agencies, the Brazilian Postal and Telegraph Company has announced that arrangements have been made to formalize the concession to official United Nations mail of the same franking privileges accorded to mail of the diplomatic corps of countries members of the 1966 Postal Union Convention of the Americas and Spain, promulgated in Brazil in 1969.

4. In 1971, authorization was granted for the conclusion with the United Nations Food and Agriculture Organization (FAO) of specific agreements pertaining to the holding

[1] No. 19,352 of 2 December 1971. Translation by the Secretariat of the United Nations.

in Brazil of the Technical Conference on Planning and Operation of Wholesale Markets in Latin America and of the Second Session of the Committee on rice for the Americas. In connexion with those meetings, all the privileges and immunities provided for in the Conventions on the privileges and immunities of the United Nations and the specialized agencies were accorded to delegates and observers and to FAO, its properties, funds and assets, as well as the staff of the Organization.

. . .

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3. Canada

PRIVILEGES AND IMMUNITIES (INTERNATIONAL ORGANIZATIONS) ACT
JOINT ORGANIZING COMMITTEE FOR GARP PRIVILEGES AND IMMUNITIES ORDER, 1971

P.C. 1971-2209
19 October, 1971

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs with the concurrence of the Minister of the Environment, pursuant to section 3 of the Privileges and Immunities (International Organizations) Act,[2] is pleased hereby to make the annexed Order respecting Privileges and Immunities in Canada of the Joint Organizing Committee of the World Meteorological Organization and the International Council of Scientific Unions for the Global Atmospheric Research Programme.

ORDER RESPECTING PRIVILEGES AND IMMUNITIES IN CANADA OF THE JOINT ORGANIZING COMMITTEE OF THE WORLD METEOROLOGICAL ORGANIZATION AND THE INTERNATIONAL COUNCIL OF SCIENTIFIC UNIONS FOR THE GLOBAL ATMOSPHERIC RESEARCH PROGRAMME

Short Title

1. This Order may be cited as the *Joint Organizing Committee for GARP Privileges and Immunities Order, 1971.*

Interpretation

2. In this Order,

(*a*) "Convention" means the Convention on the Privileges and Immunities of the United Nations:[3] and

(*b*) "Committee" means the Joint Organizing Committee of the World Meteorological Organization and the International Council of Scientific Unions for the Global Atmospheric Research Programme.

General

3. During the period commencing October 20, 1971, and terminating October 30, 1971,

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[2] See United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations* (ST/LEG/SER.B/10), p. 10 and *Juridical Yearbook*, 1965, p. 3.

[3] United Nations, *Treaty Series*, vol. 1, p. 15.

(*a*) the Committee shall have in Canada the legal capacities of a body corporate and shall, to such extent as it may require for the performance of its functions, have the privileges and immunities set forth in Articles II and III of the Convention;

(*b*) representatives of states and governments that are members of the Committee shall, to such extent as may be required for the performance of their functions, have the privileges and immunities set forth in Article IV of the Convention for representatives of Members;

(*c*) officials of the Committee in Canada shall, to such extent as may be required for the performance of their functions, have the privileges and immunities set forth in Articles V of the Convention for officials of the United Nations, and

(*d*) experts performing missions for the Committee in Canada shall, to such extent as may be required for the performance of their functions, have the privileges and immunities set forth in Article VI of the Convention for experts on missions for the United Nations.

4. Nothing in this Order exempts a Canadian citizen residing or ordinarily a permanent resident in Canda from liability for any taxes or duties imposed by any law in Canada.

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4. Federal Republic of Germany

ORDINANCE OF 18 MARCH 1971 CONCERNING THE GRANTING OF PRIVILEGES AND IMMUNITIES TO THE SPECIALIZED AGENCIES OF THE UNITED NATIONS [4]

Pursuant to article 3 of the Act of 22 June 1954 concerning the accession of the Federal Republic of Germany to the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations of 21 November 1947 and the granting of privileges and immunities to other international organizations (*Bundesgesetzblatt* 1954 II, p. 639),[5] as most recently amended by Act of 28 February 1964 (*Bundesgesetzblatt* II, p. 187),[6] the Federal Government, with the assent of the *Bundesrat*, orders as follows:

Article 1

(1) The Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, together with its annexes I to VI, VIII and IX, XI to XIV as well as Annex II in its first revision of 26 May 1960 and its second revision of 28 December 1965,[7] Annex VII in its first revision of 1 June 1950, its second revision of 1 July 1957 and its third revision of 25 July 1958, and Annex XII in its revision of 9 July 1968,[8] shall apply in respect of the granting of privileges and immunities to the following specialized agencies of the United Nations:

International Labour Organisation
(ILO—Annex I)

Food and Agriculture Organization of the United Nations
(FAO—Annex II)

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[4] Translation by the Secretariat of the United Nations.

[5] See United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations* (ST/LEG/SER.B/11), p. 25.

[6] See *Juridical Yearbook*, 1964, p. 4.

[7] *Ibid.*, 1965, p. 43.

[8] *Ibid.*, 1968, p. 66.

International Civil Aviation Organization
(ICAO—Annex III)

United Nations Educational, Scientific and Cultural Organization
(UNESCO—Annex IV)

International Monetary Fund
(FUND—Annex V)

International Bank for Reconstruction and Development
(BANK—Annex VI)

World Health Organization
(WHO—Annex VII)

Universal Postal Union
(UPU—Annex VIII)

International Telecommunication Union
(ITU—Annex IX)

World Meteorological Organization
(WMO—Annex XI)

Inter-Governmental Maritime Consultative Organization
(IMCO—Annex XII)

International Finance Corporation
(IFC—Annex XIII)

International Development Association
(IDA—Annex XIV)

(2) Hereinafter shall be published:

Annexes I, III to VI, VIII, IX and XI, XIII and XIV, annex II in the original version and in its first and second revisions, annex VII in its first, second and third revisions, and annex XII in the original version and in its first revision.

Article 2

This Ordinance shall apply also in *Land* Berlin in accordance with article 14 of the Third Transitional Act of 4 January 1952 (*Bundesgesetzblatt* I, p. 1) read in conjunction with article 4 of the Act of 22 June 1954 concerning the accession of the Federal Republic of Germany to the Convention on the privileges and immunities of the specialized agencies of the United Nations of 21 November 1947 and the granting of privileges and immunities to other international organizations (*Bundesgesetzblatt* 1954 II, p. 639), as most recently amended by Act of 28 February 1964 (*Bundesgesetzblatt* II, p. 187).

Article 3

(1) This Ordinance shall enter into force:

(*a*) For the purposes of annexes I, III to VI, IX and XI as well as annex II in the original version and annex VII in its first revision, with retroactive effect as from 10 October 1957,

(*b*) For the purposes of annex VIII, with retroactive effect as from 19 May 1958,

(*c*) For the purposes of annex VII in its second revision, with retroactive effect as from 5 September 1958,

(*d*) For the purposes of annex VII in its third revision, retroactive with effect as from 11 February 1959,

(*e*) For the purposes of annex XII in the original version, with retroactive effect as from 12 January 1962,

(*f*) For the purposes of annex XIII, with retroactive effect as from 12 April 1962,

(*g*) For the purposes of annex II in its first revision, retroactive with effect as from 23 May 1963,

(*h*) For the purposes of annex II in its second revision, annex XII in its first revision and annex XIV, on the date on which the said Annexes enter into force for the Federal Republic of Germany; notice of the date of entry into force shall be published in the *Bundesgesetzblatt*.

(2) This Ordinance shall cease to have effect on the date on which the international agreements referred to in article 1 cease to have effect. In the event that individual annexes cease to have effect, the Ordinance shall cease to have effect in so far as it relates to such annexes. Notice of the date on which they cease to have effect shall be published in the *Bundesgesetzblatt*.

Bonn, 18 March 1971

BRANDT
Federal Chancellor

SCHEEL
Federal Minister for Foreign Affairs

ANNEXES

[Not reproduced]

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5. Fiji

(*a*) DIPLOMATIC PRIVILEGES AND IMMUNITIES ACT, 1971

An Act [9] to amend the law relating to diplomatic privileges and immunities and to give effect to the Vienna Convention on Diplomatic Relations.

[13th May, 1971]

Enacted by the Parliament of Fiji:—

1. This act may be cited as the Diplomatic Privileges and Immunities Act, 1971.

2.—(1) In this Act, unless the context otherwise requires—"Convention" means the Vienna Convention on Diplomatic Relations signed in 1961, a copy of the English text of which is set out in the First Schedule to this Act;

"organisation" means any organisation referred to in section 6 of this Act;

"mission" means a diplomatic mission of any State;

"State" means a foreign state or any Commonwealth country.

(2) All expressions used in this Act and defined in Article 1 of the Convention have the same meanings as those given to them in the Convention.

3.—(1) Subject to the provisions of subsection (6) of this section, the provisions of Articles 1, 22 to 24 inclusive, and 27 to 40 inclusive of the Convention shall have the force of law in Fiji.

[9] No. 26 of 1971. Assented to on 13 May 1971.

(2) Without prejudice to the provisions of the last preceding subsection, the Minister, with the concurrence of the Minister responsible for finance, may from time to time determine, either generally or in any case or class of case, the fiscal privileges which shall be accorded to any mission or persons connected with any mission, notwithstanding that the determination may extend treatment more favourable than that required by the provisions of the Convention, and may in like manner determine the terms and conditions on which those privileges may be enjoyed.

(3) For the purpose of giving effect to any custom or agreement by which Fiji and any other State extend to each other treatment more favourable than is required by the provisions of the Convention, the Minister may from time to time, by order, declare that a mission of that State and persons connected with that mission shall be accorded such immunity from jurisdiction and inviolability, as are specified in the order:

Provided that nothing in this subsection shall apply with respect to persons to whom section 4 of this Act applies.

(4) In subsections (2) and (3) of this section, the expression "treatment more favourable" includes the according of privileges or immunities, as the case may be, to persons who under the Convention may enjoy privileges and immunities only to the extent admitted by the receiving State.

(5) Where, by or by virtue of this Act, immunity from jurisdiction is accorded to persons who are not diplomatic agents or persons enjoying immunity under Article 37 of the Convention, the immunity accorded to those first-mentioned persons may be waived in the manner and subject to the conditions specified in Article 32 of the Convention and the waiver shall have the same consequences as a waiver under that Article.

(6) For the purposes of the provisions of the Articles referred to in subsection (1) of this section—

(*a*) a reference in those provisions to the receiving State shall be construed as a reference to Fiji;

(*b*) a reference in those provisions to a national of the receiving State shall be construed as a reference to a Fiji citizen;

(*c*) the reference in paragraph 1 of Article 22 to agents of the receiving State shall be construed as including a reference to any police officer and any person exercising a power of entry to premises;

(*d*) the reference in Article 32 to waiver by the sending State shall be construed as including a waiver by the head of the mission of the sending State or by a person for the time being performing the functions of the head of mission;

(*e*) Articles 35, 36 and 40 shall be construed as granting the privileges or immunities that those Articles require to be granted;

(*f*) the reference in paragraph 1 of Article 36 to such laws and regulations as the receiving State may adopt shall be construed as including a reference to any law in force in Fiji relating to the quarantine, or the prohibition or restriction of the importation into or the exportation from Fiji of animals, plants, or goods:

Provided that any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) of this section shall not be prejudiced;

(*g*) the reference in paragraph 4 of Article 37 to the extent to which privileges and immunities are admitted by the receiving State, and the reference in paragraph 1 of Article 38 to any additional privileges and immunities that may be granted by the receiving State, shall, so far as they relate to privileges, be construed as references to such determinations as may be made by the Minister pursuant to subsection (2) of this section, and, so far as they

relate to immunities, be construed as references to such immunities as may be conferred by an order under subsection (3) of this section;

(*h*) the reference in paragraph 2 of Article 38 to the extent to which privileges and immunities are admitted by the receiving State shall, so far as it relates to privileges, be construed as reference to such determinations as may be made by the Minister pursuant to subsection (2) of this section, and, so far as it relates to immunities, be construed, in relation to persons to whom section 4 of this Act applied, as a reference to immunities conferred by that section, and, in relation to other persons to whom that paragraph applies, as a reference to such immunities as may be conferred by an order under subsection (3) of this section.

4. The members of the administrative and technical staff, and members of the service staff, of a mission who are Fiji citizens or are permanently resident in Fiji shall be accorded immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of their functions.

5. Where the Minister is satisfied that the privileges and immunities accorded in relation to a mission of Fiji in any State, or to persons connected with that mission, are less than those conferred by or by virtue of this Act in relation to the mission of that State, or to persons connected with that mission, he may, by order, withdraw, modify, or restrict, in relation to that mission or to persons connected with that mission, such of the privileges and immunities so conferred to such extent as appears to him to be proper.

6.—(1) This section shall apply to any organisation declared by the Minister, by order, to be an organisation of which two or more States or the Governments thereof are members.

(2) The Minister may from time to time, by order—

(*a*) provide that any organisation to which this section applies shall, to such extent as may be specified in the order, have the privileges and immunities specified in the Second Schedule to this Act, and shall also have the legal capacities of a body corporate;

(*b*) confer upon—

(i) any persons who are representatives (whether of Governments or not) on any organ of the organisation or at any conference convened by the organisation or are members of any committee of the organisation or of any organ thereof;

(ii) such officers or classes of officers of the organisation as are specified in the order, being the holders of such high offices in the organisation as are so specified;

(iii) such persons employed on missions on behalf of the organisation as are specified in the order,

to such extent as may be specified in the order, the privileges and immunities specified in the Third Schedule to this Act;

(*c*) confer upon such other classes of officers and servants of the organisation as are specified in the order, to such extent as may be so specified, the privileges and immunities specified in the Fourth Schedule to this Act, and the Fifth Schedule to this Act shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in sub-paragraph (i) of paragraph (*b*) of this subsection and to the members of the families forming part of the household of officers of the organisation any privileges and immunities conferred on the representatives, members, or officers under that paragraph, except in so far as the operation of the Fifth Schedule to this Act is excluded by the order conferring the privileges and immunities:

Provided that no order made under the provisions of this subsection shall confer any privilege or immunity upon any person as the representative of Her Majesty in right of Fiji or of the Government of Fiji or as a member of the staff of such a representative.

7.—(1) Whenever the services of any person are provided for appointment to the public service of Fiji pursuant to an agreement between any of the international organisations specified in the Sixth Schedule to this Act and the Government of Fiji, it shall be lawful for the Minister by order to confer upon any such person to such extent as may be specified therein the immunities and privileges set out in the Seventh Schedule to this Act.

(2) Every order made under the provisions of the last preceding subsection shall state the date from which the immunities and privileges thereby conferred shall take effect.

(3) Whenever any person ceases to be entitled to the immunities and privileges conferred by any order made under this Act the Minister shall cause a notice to that effect to be published in the Gazette.

(4) The Minister may at any time by notice in the Gazette add to, vary or delete the whole or any part of the Sixth Schedule to this Act with effect from the date specified in such notice.

(5) The fact that any person is or was entitled or not entitled to any of the immunities or privileges set out in the Seventh Schedule to this Act may be conclusively proved by producing the Gazette containing the relevant order or notice, whichever is the case.

8. The Minister may from time to time by order confer on the Judges and Registrars of the International Court of Justice established by the Charter of the United Nations, and on suitors to that Court and their agents, counsel, and advocates, such privileges, immunities, and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations.

9. Where—

(*a*) a conference is held in Fiji and is attended by representatives of the Government of Fiji and the Government or Governments of one or more States or of any of the territories for whose international relations any of those Governments is responsible; and

(*b*) it appears to the Minister that doubts may arise as to the extent to which the representatives of those Governments (other than the Government of Fiji) and members of their official staffs are entitled to privileges and immunities,

the Minister may, by notice in the Gazette, direct that every representative of any such Government (other than the Government of Fiji) shall be accorded such of the privileges and immunities conferred by or by virtue of sections 3 and 4 of this Act on a diplomatic agent as the Minister specifies, and that such of the members of his official staff as the Minister may direct shall be accorded such of the privileges and immunities conferred by or by virtue of sections 3 and 4 of this Act on members of the diplomatic staff or the administrative and technical staff of a diplomatic mission as the Minister specifies.

10. Nothing in this Act shall be construed as precluding the Minister from declining to accord privileges or immunities to, or from withdrawing, modifying, or restricting privilege or immunities in relation to, nationals or representatives of any State, or the Government thereof, on the ground that that State, or the Government thereof, is failing to accord corresponding privileges or immunities to Fiji.

11.—(1) Notwithstanding anything to the contrary in any Act, the Minister, with the concurrence of the Minister responsible for finance, may from time to time wholly or partly exempt from any public or local tax, duty, rate, levy, or fee any of the following Governments or persons:—

(*a*) the Government of any State or the Government of any territory for whose international relations the Government of any such State is responsible;

(*b*) a representative or officer of the Government of any country other than Fiji or of any provisional Government, national committee, or other authority recognised by Her Majesty in right of Fiji, if he is temporarily resident in Fiji in accordance with any arrangement made with the Government of Fiji;

(*c*) a member of the official or domestic staff, or a spouse or dependent child, of any person to whom paragraph (*b*) of this subsection applies.

(2) Where a person who is a member of the official or domestic staff of a person to whom paragraph (*b*) of the last preceding subsection applies is a Fiji citizen and not a citizen of the country concerned, or is not resident in Fiji solely for the purpose of performing his duties as such a member, that person shall not, and the spouse and dependent children of that person shall not by reason only of their being a member of his family, be entitled to any exemption granted under the last preceding subsection.

12.—(1) The powers conferred on the Minister by sections 6, 7 and 11 of this Act shall be deemed to include power to exempt from stamp under the Stamp Duties Ordinance and from any fee or duty under any other Act any instrument or class of instruments to which any organisation, government, or person, as the case may be, to which or to whom the order or exemption applies is a party.

(2) The powers conferred on the Minister by the last preceding section shall be deemed to include power on the death of any person referred to in paragraph (*b*) or paragraph (*c*) of subsection (1) of the last preceding section—

(*a*) to exempt wholly or partly the estate of that person from estate duty under the Estate and Gift Duties Ordinance; and

(*b*) to exempt any instrument or document or class of instruments or documents made for or relating to the appointment of an executor or administrator in the estate of that person, or to the administration or distribution of the estate, from stamp duty under the Stamp Duties Ordinance and from any fee or duty under any other Act.

(3) Any exemption granted by the Minister under the last preceding section may be granted either unconditionally or subject to such conditions as the Minister thinks fit, and the Minister may at any time revoke any such exemption or revoke, vary, or add to any such conditions.

(4) Every exemption referred to in subsection (3) of this section shall come into force on such date as may be specified in that behalf by the Minister. The date so specified may be before or after the date of the granting of the exemption or before or after the commencement of this Act.

(5) Notwithstanding the provisions of any exemption referred to in subsection (3) of this section, any question arising as to the nature or extent of any such exemption, or to the governments or persons entitled to any such exemption, shall be referred to and be determined by the Minister. The decision of the Minister shall not be liable to be challenged, reviewed, quashed or called in question in any court.

13.—(1) The Minister responsible for finance may direct that such refunds or payments be made from any public fund or account or from the money of any local authority, public body, or person as may in the opinion of that Minister be necessary to give effect to any fiscal privilege accorded pursuant to section 3 of this Act or to any exemption granted under sections 6, 8, 9 or 10 of this Act.

(2) Where any loss is suffered by any local authority, public body, or person by reason of the conferring of any such privilege or the granting of any such exemption or by the making

of any refund or payment directed under this section, the Minister responsible for finance may direct that such payments be made from the Consolidated Fund to that local authority, public body, or person as may be necessary in the opinion of that Minister to reimburse that loss.

14. If in any proceedings any question arises whether or not any person or any organisation is or was at any time or in respect of any period accorded any privilege or immunity under or by virtue of this Act, a certificate issued by the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.

15. This Act shall not affect any legal proceedings begun before the commencement of this Act.

16. The Minister may make regulations for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration thereof.

17. The Diplomatic Privileges Ordinance, the Commonwealth Countries and Republic of Ireland (Immunities and Privileges) Ordinance and the International Organisations (Immunities and Privileges of Certain Officers) Ordinance are hereby repealed.

First Schedule

VIENNA CONVENTIONS ON DIPLOMATIC RELATIONS

[Not reproduced] [10]

Second Schedule

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS

1. Immunity from suit and legal process.

2. The like inviolability of official premises and archives as is accorded in respect of the official premises and archives of a diplomatic mission.

3. Immunity in relation to its property and assets, wherever located and by whomsoever held, from search, requisition, confiscation, expropriation, or any other form of interference.

4. The like exemption from taxes and rates, other than taxes on the importation of goods, as is accorded to the Government of any foreign State.

5. Exemption from taxes on the importation of goods directly imported by the organisation for its official use in Fiji or for exportation, or on the importation of any publications of the organisation directly imported by it, subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.

6. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organisation for its official use and in the case of any publications of the organisation directly imported or exported by it, subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the public health, the prevention of diseases in plants and animals, and otherwise in the public interest.

7. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Fiji), of any reduced rates applicable for the corresponding service in the case of press telegrams.

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

Third Schedule

PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES, MEMBERS OF COMMITTEES, HIGH OFFICERS, AND PERSONS ON MISSIONS

1. The like immunity from suit and legal process as is accorded to a diplomatic agent.

2. The like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent.

3. The like exemption from taxes and rates as is accorded to a diplomatic agent.

Fourth Schedule

PRIVILEGES AND IMMUNITIES OF OTHER OFFICERS AND SERVANTS

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

2. Exemption from taxes in respect of emoluments received as an officer or servant of the organisation.

3. Exemption from taxes on the importation of furniture and effects imported at the time of first taking up post in Fiji, that exemption to be subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.

Fifth Schedule

PRIVILEGES AND IMMUNITIES OF OFFICIAL STAFFS AND OF HIGH OFFICERS' FAMILIES

1. Where any person is accorded any such immunities and privileges as are mentioned in the Third Schedule to this Act as the representative on any organ of the organisation or a member of any committee of the organisation or of an organ thereof, the members of his official staff accompanying him as such a representative or member shall also be accorded those immunities and privileges to the same extent as the members of the staff of a mission are accorded the immunities and privileges accorded to a diplomatic agent.

2. Where any person is accorded any such privileges and immunities as are mentioned in the Third Schedule to this Act as an officer of the organisation, the members of the family of that person who form part of his household shall also be accorded those privileges and immunities to the same extent as the members of the family of a diplomatic agent who form part of his household are accorded the privileges and immunities accorded to that diplomatic agent.

Sixth Schedule

INTERNATIONAL ORGANISATIONS

The United Nations.

The International Labour Organization.

The Food and Agriculture Organization of the United Nations.

The United Nations Educational, Scientific and Cultural Organization.

The International Civil Aviation Organization.

The World Health Organization.

The International Telecommunications Union.

The World Meteorological Organization.

The International Atomic Energy Agency.

The Universal Postal Union.

The United Nations Industrial Development Organization.

The United Nations Conference on Trade and Development.

The Inter-Governmental Maritime Consultative Organization.

Seventh Schedule

IMMUNITIES AND PRIVILEGES

1. Immunity from suit and legal process in respect of words spoken or written and all acts performed in his official capacity.

2. Exemption from taxation on all stipend, emoluments and allowances paid to him by the international organization.

Passed by the House of Representatives this 16th day of April, in the year of our Lord one thousand, nine hundred and seventy-one.

Passed by the Senate this 5th day of May, in the year of our Lord one thousand, nine hundred and seventy-one.

(*b*) DIPLOMATIC PRIVILEGES (INTERNATIONAL ORGANISATIONS) ORDER, 1971

In exercise of the powers conferred upon me by section 6 of the Diplomatic Privileges and Immunities Act, 1971, I hereby declare the organisations specified in the Schedule to this Order to be organisations of which two or more states or the Governments thereof are members and that such organisations shall have the privileges and immunities specified in the Second Schedule to that Act and shall also have the legal capacity of bodies corporate.

Made at Suva this 14th day of May, 1971.

K. K. T. MARA
Minister for Foreign Affairs,

Schedule

Commonwealth Secretariat
Food and Agriculture Organisation
International Atomic Energy Agency
International Civil Aviation Organisation
International Court of Justice
International Labour Organisation
International Telecommunication Union
South Pacific Commission
United Nations Organisation
United Nations Educational, Scientific and Cultural Organisation
Universal Postal Union
World Health Organisation
World Meteorological Organisation
United Nations Industrial Development Organisation
United Nations Conference on Trade and Development
Inter-Governmental Maritime Consultative Organisation
United Nations Office of Technical Co-operation
United Nations Development Programme

(*c*) DIPLOMATIC PRIVILEGES (PERSONS APPOINTED TO PUBLIC SERVICE OF FIJI) ORDER, 1971

In exercise of the powers conferred upon me by subsection (1) of section 7 of the Diplomatic Privileges and Immunities Act, 1971, I hereby order that the privileges and immunities specified in the Seventh Schedule to that Act be conferred upon all persons whose services are provided for appointment to the public service of Fiji pursuant to an agreement between any of the international organisations specified in the Sixth Schedule to the Act and the Government of Fiji with effect from the commencement of the Act.

Made at Suva this 14th day of May, 1971.

K. K. T. MARA
Minister for Foreign Affairs

(*d*) DIPLOMATIC PRIVILEGES (EMPLOYEES OF INTERNATIONAL ORGANISATIONS) ORDER, 1971

In exercise of the powers conferred upon me by subsection (2) of section 6 of the Diplomatic Privileges and Immunities Act, 1971, I hereby order—

(*a*) that the privileges and immunities specified in the Third Schedule to that Act be conferred upon—

Dr. J. H. Hirshman

being the Representative for the South Pacific Area for the World Health Organisation and declare that office to be a high office for the purpose of the Act;

(*b*) that the privileges and immunities specified in the Fourth Schedule to the Act be conferred upon all other persons employed in Fiji on behalf of any of the organisations specified in the Diplomatic Privileges (International Organisations) Order, 1971 other than Fiji citizens or persons permanently resident in Fiji.

Made at Suva this 14th day of May, 1971.

K. K. T. MARA
Minister for Foreign Affairs

(*e*) DIPLOMATIC PRIVILEGES AND IMMUNITIES (AMENDMENT) ACT, 1971

An Act [11] to amend the Diplomatic Privileges and Immunities Act, 1971

[17th December, 1971]

Enacted by the Parliament of Fiji—

1. This Act may be cited as the Diplomatic Privileges and Immunities (Amendment) Act, 1971.

2. The Diplomatic Privileges and Immunities Act, 1971, hereinafter called the principal Act, is amended by inserting the following section immediately after section 7:—

7A.—(1) Whenever the services of any person are provided by a State, an organisation, or by an agency, by whatever name called, sponsored by a State or organisation, for duties

[11] No. 52 of 1971. Assented to on 16 December 1971.

within Fiji approved by the Minister and such person is not entitled to immunities and privileges under the provisions of either section 6 or section 7 of this Act, the Minister may by order either—

(*a*) declare the members of any such organisation or agency specified in the order to be persons who shall be entitled to the immunities and privileges set out in the Eighth Schedule to this Act; or

(*b*) confer upon any such person such of the immunities and privileges set out in the Eighth Schedule to this Act as may be specified in the order.

(2) Every order made under the provisions of paragraph (*b*) of the last preceding subsection shall state the date from which immunities and privileges thereby conferred shall take effect.

(3) Whenever any person ceases to be entitled to the immunities and privileges conferred by any order made under the provisions of paragraph (*b*) of subsection (1) of this section, the Minister shall cause a notice to that effect to be published in the Gazette.

(4) The fact that any person is or was entitled or not entitled to any of the immunities or privileges set out in the Eighth Schedule to this Act may be conclusively proved by producing the Gazette containing the relevant order or notice, whichever is the case."

3. The principal Act is amended by inserting the following Schedule immediately after the Seventh Schedule:—

"Eighth Schedule

"PRIVILEGES AND IMMUNITIES OF A PERSON REFERRED TO IN SECTION 7A AND HIS FAMILY

"1. Exemption from taxation on all stipends, emoluments and allowances paid to such person in connection with his duties in Fiji.

"2. Exemption from taxes on the importation of professional and technical equipment used by such person in connection with his duties in Fiji and on the importation of furniture and effects, including one motor vehicle, of such person and his family imported within three months from the time of first taking up post in Fiji, that exemption to be subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue."

Passed by the House of Representatives this sixth day of December, in the year of our Lord one thousand, nine hundred and seventy-one.

Passed by the Senate this fourteenth day of December, in the year of our Lord one thousand, nine hundred and seventy-one.

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following States acceded to the Convention on the Privileges and Immunities of the United Nations in 1971:[2]

State	*Date of receipt of instrument of accession* [3]
Burundi	17 March 1971
Fiji	21 June 1971*d*

This brought up to 104 the number of States parties to this Convention.

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2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(*a*) The following agreements contain provisions similar to articles V and VI of the Agreement between the United Nations and Yugoslavia relating to the seminar on the role of youth in the promotion and protection of human rights, reproduced in the *Juridical Yearbook*, 1970, p. 28.

(i) Agreement between the United Nations and Cameroon relating to the seminar on measures to be taken on the national level for the implementation of United Nations instruments aimed at combating and eliminating racial discrimination and for the promotion of harmonious race relations: Symposium on the evils of racial discrimination.[4] Signed at New York on 30 March and 1 April 1971

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[1] United Nations, *Treaty Series*, vol. 1, p. 15.

[2] The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations, as from the date of its deposit.

[3] The symbol "*d*" immediately following the date appearing opposite the name of a State denotes a declaration by that State recognizing itself bound, as from the date of its independence, by the Convention, the application of which had been extended to its territory by a State then responsible for the conduct of its foreign relations. The date shown is the date of receipt by the Secretary-General of the notification to that effect.

[4] Came into force on 1 April 1971.

(ii) Agreement between the United Nations and Hungary for the holding of a technical meeting on methods of analysing fertility data for developing countries to be held at Budapest, Hungary, from 14 to 25 June 1971.[5] Signed at New York on 3 and 4 May 1971

(iii) Agreement between the United Nations and France for the holding of a meeting of a United Nations working group on population research in national institutions to be held at Lyon, France, from 3 to 11 June 1971, inclusive.[6] Signed at New York on 14 May 1971

(iv) Agreement between the United Nations and Gabon regarding the holding of the seminar on the participation of women in economic life, to be held at Libreville, Gabon, from 27 July to 9 August 1971.[7] Signed at New York on 28 May and 3 June 1971

(v) Agreement between the United Nations and France relating to the seminar on the dangers of a revival of all forms of intolerance and the search for ways to prevent and to control it, to be held in Nice, France, from 24 August to 6 September 1971.[8] Signed at New York on 9 and 10 June 1971. This agreement is accompanied by the following exchange of letters:

I

Permanent Mission of France
to the United Nations
New York, 9 June 1971

Sir,

In reference to the Agreement which we signed today concerning the seminar on human rights to be held at Nice from 24 August to 6 September 1971, I have the honour to confirm the interpretation which the Government of the French Republic gives to three clauses therein, in order to define more precisely the scope of its obligations and the nature of the services which it agrees to provide to meet conference requirements.

. . .

(3) Article V.2 concerns visas for entry into and exit from French territory for all participants and persons performing functions in connexion with the seminar.

It is understood that the French Government will issue the necessary visas, save in the highly exceptional case of persons banned from French territory. The visas are to be obtained by addressing an application to the French representatives at the embassy or consulate in the country of residence of the person concerned.

I should be grateful if you would confirm the agreement of the United Nations to the above-mentioned three points.

Accept, Sir, the assurances of my highest consideration.

J. KOSCIUSKO-MORIZET
Ambassador, Permanent Representative
of France to the United Nations

[5] Came into force on 4 May 1971.

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

[7] Came into force on 3 June 1971.

[8] Came into force on 10 June 1971.

II

United Nations
10 June 1971

Sir,

I have the honour to acknowledge receipt of your letter of today's date concerning the agreement concluded between the United Nations and the Government of the French Republic concerning the seminar on human rights to be held at Nice from 26 August to 6 September 1971.

I should like to confirm the agreement of the United Nations to the interpretation given by the Government of the French Republic to the three clauses contained in article IV.3 (*h*) and (*j*) and in article V.2.

. . .

(3) Lastly, with regard to *article V.2*, it is understood that the French Government will issue the necessary entry and exit visas, save in the highly exceptional case of persons banned from French territory. Such visas are to be obtained by addressing an application to the French representatives in the country of residence of the person concerned.

Accept, Sir, the assurances of my highest consideration.

C. A. STAVROPOULOS
Under-Secretary-General,
Legal Counsel

(*b*) Agreement between the United Nations and Cameroon establishing the Yaounde Demographic Institute.[9] Signed at Yaounde on 9 November 1971

This agreement contains provisions similar to articles VI (3) and VII of the Agreement between the United Nations and the United Arab Republic relating to the continuation and extension of the Regional Centre for Demographic Research and Training established at Cairo, reproduced in the *Juridical Yearbook*, 1968, p. 40.

(*c*) Agreement between the United Nations and Kenya concerning arrangements for the second session of the United Nations Committee on Natural Resources.[10] Signed at Geneva on 16 December 1971 and Nairobi on 23 December 1971

. . .

VI. *Liability*

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to person or property in the premises referred to in Article I above; (*b*) injury or damage to persons or property caused by, or incurred in using, the transportation referred to in Article II above; (*c*) the employment for the Conference of the personnel referred to in Article IV above, and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other

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

[10] Came into force on 23 December 1971.

demands, except where it is agreed by the United Nations and the Government that the injury or damage is attributable to gross negligence or wilful misconduct on the part of the United Nations or its officials.

VII. *Privileges and Immunities*

1. The Conventions on the Privileges and Immunities of the United Nations and of the specialized agencies, to which the Government of Kenya is a party, shall be applicable in respect of the Conference. Conference premises for the purpose of such application shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations.

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

3. Officials of the United Nations performing functions in connexion with the Conference shall enjoy the privileges and immunities provided by articles V and VII of the Convention on the Privileges and Immunities of the United Nations. All participants and all persons performing functions in connexion with the Conference shall be accorded such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

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

5. The Government shall impose no impediment to transit to and from the Conference of any persons whose presence at the Conference is authorized by the United Nations and shall grant any visa required for such persons promptly and without charge. Such persons shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

VIII. *Import Duties and Tax*

The Government shall allow the temporary importation duty-free of all equipment and shall waive import duties and taxes with respect to supplies necessary for the meeting. It shall issue without delay to the United Nations any necessary import and export permits.

. . .

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF [11]

Article VI

Claims against UNICEF

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

[11] Revised January 1968.

Article VII

Privileges and immunities

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

Agreement between UNICEF and the Governments of Yemen, Mauritius, the United Arab Republic, Oman, Bahrain and Qatar concerning the activities of UNICEF.[12] Signed respectively at Sana'a on 17 March 1971, at Kampala on 22 February 1971 and at Port Louis on 19 April 1971, at Cairo on 8 March 1971, at Muscat on 9 July 1971, at Beirut and at Manama on 26 August 1971, and at Beirut on 21 September 1971 and at Doha on 9 October 1971

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

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4. AGREEMENTS RELATING TO OPERATIONAL ASSISTANCE: STANDARD AGREEMENT ON OPERATIONAL ASSISTANCE [13]

Article II

Functions of the officers

. . .

3. [See *Juridical Yearbook*, 1965, p. 37]

. . .

Article IV

Obligations of the Government

. . .

5. [See *Juridical Yearbook*, 1965, pp. 37 and 38]

6. [See *Juridical Yearbook*, 1968, pp. 46 and 47]

. . .

(*a*) Agreement on operational assistance between the United Nations (including UNIDO and UNCTAD), ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Government of Mali.[14] Signed at Bamako on 16 March 1971

This agreement contains articles similar to articles II (3) and IV (5) and (6) of the model standard agreement. It was subsequently amended by an exchange of letters dated 9 July and 2 September 1971 under which the IBRD has been added to the list of international organizations parties to the agreement.

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[12] Came into force respectively on 17 March 1971, 19 April 1971, 29 April 1971, 9 July 1971, 26 August 1971 and 9 October 1971.

[13] UNDP, *Field Manual*, Edition II (document DP/4), section IX C (17 july 1969).

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

(*b*) Agreements on operational assistance between the United Nations (including UNIDO and UNCTAD) ILO, FAO, UNESCO, ICAO, WHO, ITU, IAEA, UPU and IMCO, and the Governments of Panama and Ecuador.[15] Signed respectively at Panama on 26 March 1971 and at Quito on 13 July 1971

These agreements contain articles similar to articles II (3) and IV (5) and (6) of the model standard agreement.

(*c*) Agreements on operational assistance between the United Nations (including UNIDO and UNCTAD), ILO, FAO, UNESCO, ICAO, WMO, ITU, WMO, IAEA, UPU, IMCO and IBRD, and the Governments of Haiti and the Dominican Republic.[16] Signed respectively at Port au Prince on 21 May 1971 and at Santo Domingo on 26 October 1971

These agreements contain articles similar to articles II (3) and IV (5) and (6) of the model standard agreement.

(*d*) Agreement on operational assistance between the United Nations (including UNIDO and UNCTAD), the ILO, FAO, UNESCO, ICAO, WHO, ITU, WHO, IAEA, UPU, IMCO and IBRD and the United Kingdom for the provision of operational and executive personnel to the Governments of the territories (other than Southern Rhodesia) for the conduct of whose international relations the Government of the United Kingdom is responsible.[17] Signed at New York on 15 October 1971

This agreement contains articles similar to articles II (3) and IV (5) and (6) of the model standard agreement except that in paragraphs 5 and 6 of article IV, the words "the Government" wherever they appear are replaced by "the Territorial Government".

(*e*) Agreement on operational assistance between the United Nations, ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU, IMCO, UNIDO and IBRD, and Trinidad and Tobago.[18] Signed at Trinidad and Tobago on 15 October 1971

This agreement contains articles similar to articles II (3) and IV (5) and (6) of the model standard agreement.

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

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

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

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

5. AGREEMENTS CONCERNING ASSISTANCE FROM THE WORLD FOOD PROGRAMME

(*a*) Basic agreements between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and the Governments of Dahomey, Somalia, Cyprus, the Dominican Republic, Yemen, Nepal, Tunisia, Panama, Algeria, the United Republic of Tanzania, Mauritania, Liberia, Guinea, Ghana, Zambia, Ivory Coast, Jordan and Ethiopia concerning assistance from the World Food Programme.[19] Signed respectively at Cotonou on 19 May 1971, at Mogadiscio on 30 May 1967, at Nicosia on 24 June 1967, at Santo Domingo on 8 August 1967, at Sana'a on 12 July and 19 August 1967, at Kathmandu on 30 August 1967, at Tunis on 9 September 1967, at Panama on 15 September 1967, at Algiers on 19 September 1967, at Dar es Salaam on 6 October 1967, at Nouakchott on 17 October 1967, at Monrovia on 29 September and 20 October 1967, at Conakry on 12 December 1967, at Accra on 13 December 1967, at Lusaka on 16 November and 27 December 1967, at Abidjan on 13 January 1968, at Amman on 25 January 1968 and at Addis Abeba on 13 February 1968

These agreements contain the following provisions:

Article V

Facilities, privileges and immunities

1. The Government shall afford to officials and consultants of the World Food Program and to other persons performing services on behalf of the Program such facilities as are afforded to those of the United Nations and specialized agencies.

2. The Government shall apply the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies to the World Food Program, its property, funds and assets and to its officials and consultants.

3. The Government shall be responsible for dealing with any claims which may be brought by third parties against the World Food Program or against its officials or consultants or other persons performing services on behalf of the World Food Program under this Agreement and shall hold the World Food Program and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the World Food Program that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

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[19] Came into force respectively on 19 May 1967, 30 May 1967, 24 June 1967, 8 August 1967, 19 August 1967, 30 August 1967, 9 September 1967, 15 September 1967, 19 September 1967, 6 October 1967, 17 October 1967, 20 October 1967, 12 December 1967, 13 December 1967, 27 December 1967, 13 January 1968, 25 January 1968 and 13 February 1968.

(*b*) Agreement between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and China. [20, 21] Signed at Taipei on 9 September 1967

This agreement contains an article similar to article V reproduced above under (*a*), except that paragraph 2 reads as follows:

> "2. For purposes connected with this Agreement, the Government, pending its accession to the Convention on the Privileges and Immunities of the United Nations, agrees to provisionally extend to the World Food Programme, to its property, funds and assets, and to its officials including consultants, the same privileges and immunities as set forth in the Convention."

(*c*/ Agreement between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and Upper Volta. [22] Signed at Ouagadougou on 12 December 1967

This agreement contains an article similar to article V reproduced above under (*a*), except that paragraph 2 has been omitted.

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

[21] China is an original Member of the United Nations, the Charter having been signed and ratified on its behalf, on 26 June and 28 September 1945 respectively, by the Government of the Republic of China, which continued to represent China in the United Nations until 25 October 1971.

On 25 October 1971, the General Assembly of the United Nations adopted its resolution 2758 (XXVI), reading as follows:

The General Assembly,

Recalling the principles of the Charter of the United Nations,

Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter,

Recognizing that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.

The United Nations had been notified on 18 November 1949 of the formation, on 1 October 1949, of the Central People's Government of the People's Republic of China. Proposals to effect a change in the representation of China in the United Nations subsequent to that time were not approved until the resolution quoted above was adopted.

All entries recorded throughout this publication in respect of China refer to actions taken by the authorities representing China in the United Nations at the time of those actions.

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

B. Treaty provisions concerning the legal status of intergovernmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[23] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1971, the following State notified its succession to the Convention in respect of the specialized agencies indicated below:[24]

State		*Date of receipt of the notification*	*Specialized agencies*
Barbados	Notification of succession	19 November 1971	WHO, ICAO, ILO, FAO, UNESCO, FUND, UPU, ITU, WMO, IMCO

As of 31 December 1971, 74 States were parties to the Convention.

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(1) Memorandum of Agreement between the Government of Uganda and the United Nations Educational, Scientific and Cultural Organization concerning the Concluding Seminar of the Biology Teaching Pilot Project (Kampala, January 1972). Signed at Paris on 24 September 1971 and at Kampala on 15 October 1971

Privileges and immunities

. . .

7. The Government of Uganda shall apply, in respect of the Seminar, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies and Annex IV thereto relating to UNESCO. In particular, the Government shall ensure that no restriction is placed upon the right of entry into, sojourn in and departure from its territory of all persons entitled to attend the Seminar in an official capacity, without distinction of nationality.

8. The Government of Uganda shall ensure that documentation and technical material emanating from UNESCO and required for the Seminar is admitted free of duty, expeditiously cleared through customs and transported as priority consignment to its destination.

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(2) Agreements were also concluded between UNESCO and the Governments of Argentina, Ethiopia, Finland, Malaysia, Netherlands, Nigeria, Philippines, Sudan, Tanzania, Trinidad and Tobago, Turkey, United Arab Republic, Venezuela, Yugoslavia and Zambia, concerning meetings on their territories. These agreements contain a provision similar to the following:

The Government will apply, in respect of this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies and Annex IV thereto relating

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

[24] The Convention is in force with regard to each State which deposited an instrument of accession in respect of specialized agencies indicated therein or in a subsequent notification as from the date of deposit of such instrument or receipt of such notification.

to UNESCO, to which it has been a party since _____, it being understood, in particular, that no restriction shall be placed upon the right of entry into, sojourn in and departure from the territory of _____ of any person entitled to attend the meeting, without distinction of nationality.

3. WORLD HEALTH ORGANIZATION

Basic agreements between the World Health Organization and the Governments of the Gambia and Oman for the provision of technical advisory assistance. [25] Signed respectively at Brazzaville on 7 June 1971 and Bathurst on 21 July 1971, and at Alexandria on 15 December 1971 and Muscat on 27 December 1971

These agreements contain provisions similar to articles I, paragraph 6, and IV of the Agreement between the World Health Organization and Guyana for the provision of technical advisory assistance, signed at Georgetown on 14 June 1968 and at Washington on 3 July 1968: see *Juridical Yearbook*, 1968, p. 56.

4. INTERNATIONAL TELECOMMUNICATION UNION

(*a*) Agreement between the Swiss Federal Council and the International Telecommunication Union concerning the legal status of the International Telecommunication Union in Switzerland.[26] Signed at Geneva on 22 July 1971

The Swiss Federal Council,
of the one part, and

the International Telecommunication Union,
of the other,

wishing to conclude an agreement to regulate the legal status of the International Telecommunication Union in Switzerland, have agreed on the following provisions:

Article 1

Freedom of action of the ITU

1. The Federal Council guarantees to the International Telecommunication Union (hereinafter called the Union) the independence and freedom of action belonging to it as an international institution.

2. In particular, it recognizes that the Union and its Members in their relations with the Union enjoy absolute freedom of meeting, including freedom of discussion and decision.

Article 2

Personality

The Federal Council recognizes the international personality and legal capacity of the Union.

[25] Came into force respectively on 21 July 1971 and on 27 December 1971.

[26] Came into force on the date of signature. By exchange of letters dated 15 and 21 July 1971 between the Political Department and the ITU, the status applied to the Union pursuant to the exchange of letters dated 6 and 25 February 1948 (Legislative Series of the United Nations, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II—ST/LEG/SER.B/11, pp. 319-320) was repealed as of 22 July 1971.

Article 3

Immunities and privileges

The Union shall enjoy the immunities and privileges granted in Switzerland, now or in the future, to the United Nations and its specialized agencies.

Article 4

Inviolability

1. The buildings or parts of buildings and the adjoining ground used for the purposes of the Union, by whomsoever they may be owned, shall be inviolable. No agent of the Swiss federal, cantonal or communal public authority may enter them without the express consent of the Union. Only the Secretary-General or his duly authorized representative shall be competent to waive this right of inviolability.

2. The archives of the Union and in general all documents belonging to it or in its possession which are intended for its official use shall be inviolable at all times, wherever they may be.

3. The Union shall be responsible for the control of its premises and for keeping order therein.

Article 5

Immunity from legal process and immunity from other measures

1. The Union shall enjoy immunity from penal, civil and administrative process except in so far as this immunity is formally waived by the Secretary-General or his duly authorized representative. The insertion in a contract of a clause recognizing the jurisdiction of an ordinary court shall constitute formal waiver of the immunity. However, in the absence of a clause expressly to the contrary, such waiver shall not extend to any measure of execution.

2. The buildings or parts of buildings, the adjoining grounds and the assets owned by the Union or used by it for its purposes, wherever they may be and by whomsoever they may be held, shall be immune from any search, requisition, seizure or measure of execution.

Article 6

Communications

1. The Union shall enjoy for its official communications treatment not less favourable than that accorded to the United Nations in Switzerland, to the extent compatible with the International Telecommunication Convention.

2. The provisions of the present article shall in no way affect the obligations accepted by Switzerland as a Member of the Union with regard to service telecommunications exchanged between the Union and its Members.

3. The Union shall have the right to use codes for its official communications and to despatch and receive its correspondence by duly identified courier or bags which shall have the same immunities and privileges as diplomatic couriers and bags.

4. No censorship shall be applied to the duly authenticated official correspondence and other official communications of the Union.

Article 7

Publications

The import and export of publications of the Union shall not be subject to any restrictive measures.

Article 8

Fiscal position

1. The Union, its assets, income and other property shall be exempt from direct federal, cantonal and communal taxation. With regard to immovable property, however, such exemption shall apply only to that which is owned by the Union and which is occupied by its services and to income derived therefrom.

2. The Union shall be exempt from indirect federal, cantonal and communal taxation.

3. The Union shall be exempt from all federal, cantonal and communal charges which do not represent charges for specific services rendered.

4. If necessary, the exemptions mentioned above may be applied by way of reimbursement at the request of the Union and in accordance with a procedure to be determined by the Union and the competent Swiss authorities.

Article 9

Customs position

The customs clearance of articles intended for the Union shall be governed by the customs regulations of the Federal Council which are applicable to international organizations (Customs Regulations) and which are an integral part of the present agreement.

Article 10

Free disposal of funds

1. The Union may receive, hold, convert and transfer funds, gold and any notes, specie and securities of any kind, and may dispose of them freely both within Switzerland and in its relations with other countries.

2. The present article also applies to Members of the Union in their relations with the Union.

Article 11

Status of permanent representatives of Members of the Union

The permanent representatives of Members of the Union shall enjoy the immunities and privileges granted to the members of equivalent rank of diplomatic missions accredited to the Federal Council.

Article 12

Status of representatives other than permanent representatives

1. The representatives of the Members of the Union, their deputies, technical experts, advisers and secretaries of delegations sent to Switzerland on official business with the principal and subsidiary organs of the Union or to conferences convened by it shall enjoy the following privileges and immunities in the discharge of their duties in Switzerland and during their journeys to or from the place of meeting:

(*a*) immunity from personal arrest or detention and, in respect of words spoken or written and acts performed by them in the discharge of their duties, immunity from jurisdiction;

(*b*) inviolability of the person, place or residence and all objects belonging to the person concerned;

(*c*) exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration and national service obligations;

(*d*) customs facilities granted under the Customs Regulations;

(*e*) the same immunities and facilities in respect of their personal luggage as are accorded to diplomatic agents;

(*f*) the same facilities in respect of currency or exchange regulations as are accorded to representatives of foreign governments on official missions.

2. The representatives of Members shall have the right to use cyphers in their official communications and to receive or send documents or correspondence by courier or in diplomatic bags in accordance with Article 27 of the Vienna Convention on Diplomatic Relations dated 18 April 1961.

3. In order to secure for the representatives of Members of the Union on its principal and subsidiary organs and at conferences convened by the Union complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Article 13

Object of the privileges and immunities accorded to representatives

Privileges and immunities are accorded to the representatives of Members of the Union not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Union. Consequently, a Member of the Union not only has the right but is under a duty to waive the immunity of its representative in any case where, in the opinion of that Member, the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded.

Article 14

Status of the Secretary-General and of officials in certain categories

The Secretary-General of the Union and certain officials of the categories designated by him with the agreement of the Federal Council shall enjoy the privileges, immunities, exemptions and facilities granted to diplomatic agents in accordance with international law and custom.

Article 15

Immunities and facilities accorded to all officials

The officials of the Union, irrespective of nationality, shall enjoy the following immunities and facilities:

(*a*) exemption from jurisdiction in respect of words spoken or written and acts performed in the discharge of their duties, notwithstanding that the persons concerned are no longer officials;

(*b*) exemption from all federal, cantonal and communal taxes on salaries, emoluments and indemnities paid to them by the Union. Capital sums due in any circumstances by a pension fund or provident fund within the meaning of article 19 of the present agreement shall also be exempt at the time of payment from Swiss taxes; the same principle shall apply to all the indemnities for sickness, accidents, etc., paid to agents, officials or employees of the Union.

Article 16

Immunities and facilities accorded to officials not of Swiss nationality

Officials of the Union who are not of Swiss nationality shall:

(*a*) be exempt from national service obligations in Switzerland;

(*b*) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;

(*c*) be accorded the same privileges in respect of exchange facilities as are accorded to officials of the Office of the United Nations at Geneva;

(*d*) be given, together with the members of their families and their domestic staff, the same repatriation facilities in the event of international crisis as are accorded to officials of the Office of the United Nations at Geneva;

(*e*) enjoy the customs facilities provided in the Customs Regulations.

Article 17

Experts on missions for the Union

Experts (other than officials coming within the scope of article 15) performing special missions for the Union shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

(*a*) exemption from immigration restrictions, aliens' registration and national service obligations;

(*b*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*c*) in respect of words spoken and written and acts performed by them in the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the Union;

(*d*) inviolability for all papers and documents;

(*e*) for the purpose of their communications with the Union, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*f*) the same facilities in respect of currency or exchange regulations as are accorded to representatives of foreign governments on temporary official missions;

(*g*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

Privileges and immunities are granted to experts in the interests of the Union and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Union.

Article 18

Other persons summoned by the Union

The Swiss authorities shall take the necessary measures to facilitate the entry into, sojourn in, and departure from Swiss territory of all persons, irrespective of their nationality, having official business with the Union.

Article 19

Pension funds and special funds

1. Any pension fund or provident fund conducted under the authority of the Union shall enjoy legal capacity in Switzerland if it so requests. If its headquarters are in Switzerland it shall observe the forms prescribed by Swiss law. In so far as it acts on behalf of Union officials, it shall be accorded the same exemptions, immunities and privileges as are accorded to the Union itself.

2. Funds and foundations with or without separate legal status, administered under the auspices of the Union and devoted to its official purposes, shall be given the benefit of the same exemptions, immunities and privileges as the Union itself with regard to all other properties except immovable property.

Article 20

Social insurance

The Union shall be exempt from all compulsory contributions to general social insurance funds such as equalization, unemployment insurance and workmen's compensation funds, etc., on the understanding that the Union will, so far as possible, and under conditions to be agreed upon, insure with Swiss social insurance funds those of its agents who are not assured of equivalent social protection by the Union.

Article 21

Object of the privileges and immunities accorded to officials

1. The privileges and immunities provided for in the present agreement in respect of officials of the Union are not designed for the personal benefit of those officials but solely to ensure the free functioning of the Union and the complete independence of its agents in all circumstances.

2. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where he considers that such immunity would impede the course of justice and can be waived without prejudice to the interests of the Union. The Administrative Council shall have the power to waive the immunities of the Secretary-General.

Article 22

Prevention of abuses

The Union and the Swiss authorities shall cooperate at all times to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges, immunities and facilities provided for in this agreement.

Article 23

Identity cards

1. The Federal Political Department shall furnish each official of the Union with an identity card bearing the photograph of the holder. This card, authenticated by the Federal Political Department and the Union, shall serve to identify the official in relation to all federal, cantonal and communal authorities. An identical card shall be furnished also to the dependent members of the families of the officials covered by articles 14 and 16 who form part of their households and do not exercise any lucrative activity.

2. The Union shall transmit regularly to the Federal Political Department a list of the officials of the Union and the members of their families, showing in each case the date of birth, nationality, residence in Switzerland and the category or class of function of each official.

Article 24

Disputes of a private nature

The Union shall make provision for appropriate methods of settlement of:

(*a*) disputes arising out of contracts and disputes of a private law character to which the Union is a party;

(*b*) disputes involving an official of the Union who by reason of his official position enjoys immunity, if such immunity has not been waived under the provisions of articles 17 or 21.

Article 25

Non-responsibility of Switzerland

Switzerland shall not incur by reason of the activity of the Union on its territory any international responsibility for acts or omissions of the Union or of its agents acting or abstaining from acting within the limits of their functions.

Article 26

Security of Switzerland

1. Nothing in the present agreement shall affect the right of the Swiss Federal Council to take the precautions necessary for the security of Switzerland.

2. If the Swiss Federal Council considers it necessary to apply the first paragraph of this article, it shall approach the Union as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the interests of the Union.

3. The Union shall collaborate with the Swiss authorities to avoid any prejudice to the security of Switzerland resulting from its activity.

Article 27

Execution of the agreement by Switzerland

The Federal Political Department is the Swiss authority which is entrusted with the execution of this agreement and the arrangement for its execution.

Article 28

Jurisdiction

1. Any divergence of opinion concerning the application or interpretation of this agreement which has not been settled by direct conversations between the parties may be submitted by either party to an arbitral tribunal of three members.

2. The Swiss Federal Council and the Union shall each choose one member of the tribunal.

3. The members so appointed shall choose their chairman.

4. In the event of disagreement between the members on the choice of chairman, the chairman shall be chosen by the President of the International Court of Justice at the request of the members of the tribunal.

5. The tribunal shall determine its own procedure.

Article 29

Coming into force

This agreement shall come into force as soon as it has been signed on behalf of the Swiss Federal Council and in the name of the Union.

Article 30

Modification of the agreement

1. This agreement may be revised at the request of either party.

2. In this event, the two parties shall consult each other concerning the modifications to be made in its provisions.

3. If the negotiations do not result in an understanding within one year, the agreement may be denounced by either party giving two years' notice.

DONE and signed at Geneva on 22 July 1971
in two copies.

For the Swiss Federal Council	For the International Telecommunication Union
The Permanent Representative of Switzerland to International Organizations in Geneva	*The Secretary-General*
Jean HUMBERT	Mohammed MILI

(*b*) Arrangement for the execution of the Agreement made between the Swiss Federal Council and the International Telecommunication Union concerning the legal status of the International Telecommunication Union in Switzerland.[27] Signed on 22 July 1971

Article 1

Import and export of goods

The Swiss Federal Council recognizes, so far as it is concerned, that the provisions and restrictions on the import and export of goods are not applicable to objects for the official use of the International Telecommunication Union and necessary for its work, subject to the provisions of general international conventions and measures of a sanitary character, it being understood that it is for the Union to obtain any consent from other States which may be necessary to make this exemption effective.

Article 2

Fiscal position

1. The Union may not be required to pay any tax on the rental due for premises leased by it and occupied by its services.

2. With regard to federal turnover tax, however, whether included in the price or patently transferred, the exemption shall apply only to purchases intended for the Union's official use and provided that the amount invoiced for one and the same purchase exceeds 100 Swiss francs.

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

Article 3

Free disposal of funds

1. The Union may hold accounts in all currencies.

2. The Union may freely transfer abroad funds, notes, specie and securities.

3. The Union may convert all moneys held by it into other currencies.

4. The Swiss Federal Council will have regard to the provisions of the preceding paragraphs of this article in its negotiations with foreign governments concerning the transfer of funds and goods.

Article 4

Press communications

The Union shall enjoy the preferential tariffs applicable to press communications, in accordance with the International Telecommunications Convention, for its communications addressed directly or through an intermediary to the press and radio.

Article 5

Visas

1. For the purpose of facilitating the entry into Switzerland of the persons enumerated in articles 11, 12, 14, 16, 17 and 18 of the agreement, Swiss embassies and consulates abroad shall be given general instructions in advance to grant visas on production of a passport or any equivalent identity and travel document and of a document sufficient to establish the official relationship of the applicant to the Union.

2. Swiss embassies and consulates will be given instructions to grant visas without any delay or waiting period and without requiring the personal attendance of the applicant or the payment of charges.

3. The provisions of article 18 of the agreement and of this article shall apply in the same conditions to the members of the family of the person concerned as defined in article 23 of the agreement.

Article 6

Status of representatives other than permanent representatives

Where the incidence of any form of taxation depends upon residence in Switzerland, periods during which the representatives of Members of the Union on its principal and subsidiary organs and at meetings convened by the Union are present in Switzerland for the discharge of their duties shall not be considered as periods of residence.

Article 7

Immunities and facilities accorded to officials not of Swiss nationality

Officials of the Union who are not of Swiss nationality shall enjoy the following exemptions and facilities:

(*a*) exemption from federal, cantonal and communal taxes in accordance with the usages established for the non-Swiss personnel of the international institutions in Geneva;

(*b*) the customs examination of luggage of the Union officials mentioned in this article shall be limited to the strict minimum.

Article 8

Military service of Swiss officials

1. The Secretary-General of the Union shall communicate to the Swiss Federal Council a list of the officials of Swiss nationality who are subject to military obligations.

2. The Secretary-General of the Union and the Swiss Federal Council shall draw up by common agreement a restricted list of officials of Swiss nationality who, on account of their functions, will be accorded dispensations from military service.

3. In the event of the mobilization of other Swiss officials, the Union may request through the Federal Political Department a postponement of call-up or any other appropriate measures.

Article 9

Diplomatic passports

Officials of Swiss nationality, of the categories fixed by common agreement between the Secretary-General of the Union and the Swiss Federal Council, who travel on official mission or reside abroad on account of their functions shall be entitled to diplomatic passports issued by the Federal Political Department.

Article 10

Coming into force

The present arrangement shall come into force as soon as it has been signed in the name of the Swiss Federal Council and in the name of the International Telecommunication Union.

Article 11

Modification of the arrangement

1. This arrangement may be revised at the request of either party.

2. In this event the two parties shall consult each other concerning the modifications to be made in the provisions of the arrangement.

3. If the negotiations do not result in an understanding within one year, the arrangement may be denounced by either party giving two years' notice.

For the Swiss Federal Council	For the International Telecommunication Union
The Permanent Représentative of Switzerland to International Organizations in Geneva	*The Secretary-General*
Jean HUMBERT	Mohammed MILI

5. INTERNATIONAL ATOMIC ENERGY AGENCY

1. Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[28] Approved by the Board of Governors of the Agency on 1 July 1959

(a) Deposit of Instruments of Acceptance

The following Member State accepted the Agreement on the Privileges and Immunities of the International Atomic Energy Agency in 1971: [29]

State	*Date of deposit of instrument of acceptance*
Indonesia [30]	4 June 1971

This brought up to 39 the number of States parties to the Agreement.

(b) *Incorporation of the Agreement by reference in other agreements*

(i) Section 20 of the Agreement between the International Atomic Energy Agency, the Government of India and the Government of the United States of America relating to Safeguards Provisions (INFCIRC/154); entered into force on 27 January 1971.

(ii) Article VII, section 13 of the Agreement between the International Atomic Energy Agency and the Governments of the Federal Republic of Germany and the United Mexican States for the Transfer of a Training Reactor and Enriched Uranium Therefor (INFCIRC/162); entered into force on 21 December 1971.

2. Agreement between the International Atomic Energy Agency and the Republic of Austria [31] amending the agreement of 11 December 1957 regarding the Headquarters of the International Atomic Energy Agency. [32] Signed at Vienna on 4 June 1970

The International Atomic Energy Agency and the
Republic of Austria,

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

[29] The Agreement comes into force as between the Agency and the accepting States on the date of deposit of instruments of acceptance.

[30] With the following reservations:
"Article II section 2 (*b*):
The capacity of the International Atomic Energy Agency to acquire and dispose of immovable property shall be exercised with due regard to national laws and regulations.
"Article X section 34:
With regard to the competence of the International Court of Justice in disputes concerning the interpretation or application of the Convention, the Government of Indonesia reserves the right to maintain that in every individual case the agreement of the parties to the dispute is required before the Court for a ruling.
"Article VI section 18:
The concessions and privileges conferred by the Agreement on the employees of the Agency, other than those which also follow from Article XV of the Statute, such as immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, should not be admissible to the Indonesian Nationals serving on the staff of the Agency in Indonesia."

[31] Entered into force on 1 October 1971.

[32] United Nations, *Treaty Series*, vol. 339, p. 111.

In the light of sub-section 49 (*c*) of the Agreement signed on 11 December 1957 regarding the Headquarters of the International Atomic Energy Agency—hereinafter referred to as the "Headquarters Agreement"—which provides that terms and conditions contained in any agreement between the Republic of Austria and another intergovernmental organization and more favourable to that organization than similar terms and conditions of the Headquarters Agreement shall be extended to the IAEA by means of a supplemental agreement, and

Having regard to various terms and conditions of the Agreement signed on 13 April 1967 between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization, together with the exchange of notes of the same date, [33]

Have agreed as follows:

Article I

Sub-section 22 (*g*) of the Headquarters Agreement shall be amended to read as follows:

"Articles imported in accordance with sub-sections (*d*) and (*e*) or obtained from the Government in accordance with sub-section (*f*) of this section shall not be sold by the IAEA in the Republic of Austria within two years of their importation or acquisition, unless otherwise agreed upon by the Government."

Article II

Section 24 of the Headquarters Agreement shall be amended to read as follows:

"The United Nations Joint Staff Pension Fund and any pension or provident fund established by or conducted under the authority of the IAEA shall enjoy legal capacity in the Republic of Austria if the IAEA so requests and shall enjoy the same exemptions, privileges and immunities as the IAEA itself. The legal status enjoyed by the United Nations Joint Staff Pension Fund in the Republic of Austria by virtue of other international agreements shall not be affected by this provision."

Article III

Section 26 of the Headquarters Agreement shall be supplemented by a third sentence to read as follows:

"Persons to whom this Agreement applies, and who are not Austrian nationals or stateless persons resident in the Republic of Austria, shall not benefit under the Austrian regulations governing family and maternity allowances."

Article IV

(1) Sub-section 38 (*d*) of the Headquarters Agreement shall be amended to read as follows:

"Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the IAEA or by one of the pension or provident funds referred to in section 24 for services past or present or in connection with their service with the IAEA."

(2) Sub-section 38 (*h*) of the Headquarters Agreement shall be amended to read as follows:

"Freedom to acquire or maintain within the Republic of Austria or elsewhere foreign securities, foreign currency accounts and other movable and, under the same conditions applicable

[33] See *Juridical Yearbook*, 1967, p. 44.

to Austrian nationals, immovable property; and at the termination of their IAEA employment the right to take out of the Republic of Austria through authorized channels without prohibition, or restriction, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria."

(3) Sub-section 38 (*j*) (iii) of the Headquarters Agreement shall be amended to read as follows:

"Limited quantities of certain articles for personal use or consumption and not for gift or sale; the IAEA may establish a commissary for the sale of such articles to its officials, to the Governors and Resident Representatives to the IAEA, and to those of their alternates, advisers and experts who have diplomatic status; a supplemental agreement shall be concluded between the IAEA and the Government to regulate the exercise of these rights."

Article V

(1) Sub-section 48 (*c*) of the Headquarters Agreement shall be amended to read as follows:

"Officials of the IAEA who are Austrian nationals or stateless persons resident in the Republic of Austria shall enjoy the privileges and immunities, exemptions and facilities accorded by this Agreement to the extent recognized by international law as accepted by the Government, provided, however, that sections 25 and 26 and sub-sections 38 (*a*), 38 (*d*) and 38 (*g*) shall, in any event, apply to them. They shall also have access to the Commissary established in accordance with sub-section 38 (*j*) (iii), the exercise of this right being regulated by the supplemental agreement provided for in that sub-section. Experts of the IAEA who are Austrian nationals or stateless persons resident in the Republic of Austria shall enjoy only the privileges and immunities, exemptions and facilities accorded by sub-sections 42 (*a*), 42 (*b*), 42 (*c*), 42 (*d*), 42 (*g*) and 42 (*h*)."

(2) Sub-section 48 (*d*) of the Headquarters Agreement shall be amended to read as follows:

"This Agreement shall apply irrespective of whether the Government maintains or does not maintain diplomatic relations with the State concerned and irrespective of whether the State concerned grants a similar privilege or immunity to the diplomatic envoys or nationals of the Republic of Austria."

Article VI

This Agreement shall enter into force upon an exchange of notes between the Director General of the International Atomic Energy Agency and the duly authorized representative of the Federal President of the Republic of Austria.

DONE at Vienna, this fourth day of June 1970, in two copies in the Chinese, English, French, Russian, Spanish and German languages, each text being equally authentic.

For the International Atomic Energy Agency:

(*Signed*) Sigvard EKLUND

For the Republic of Austria:

(*Signed*) Rudolf KIRCHSCHLÄGER

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

SELECTED DECISIONS, RECOMMENDATIONS AND REPORTS OF A LEGAL CHARACTER BY THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions, recommendations and reports of a legal character by the United Nations

United Nations General Assembly—twenty-sixth session

1. REPORT OF THE ECONOMIC AND SOCIAL COUNCIL (AGENDA ITEM 12)

Resolution [2856 (XXVI)] adopted by the General Assembly

2856 (XXVI). Declaration on the Rights of Mentally Retarded Persons

The General Assembly,

Mindful of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.

3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

2027th plenary meeting.
20 December 1971.

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2. QUESTION OF CHEMICAL AND BACTERIOLOGICAL (BIOLOGICAL) WEAPONS: REPORT OF THE CONFERENCE OF THE COMMITTEE ON DISARMAMENT (AGENDA ITEM 28)

Resolution [2827 (XXVI)] adopted by the General Assembly

2827 (XXVI). Question of chemical and bacteriological (biological) weapons

A

The General Assembly,

Recalling its resolution 2454 A (XXIII) of 20 December 1968, its resolution 2603 B (XXIV) of 16 December 1969, and in particular its resolution 2662 (XXV) of 7 December 1970 in which it stressed that the prospects for international peace and security, as well as the achievement of the goal of general and complete disarmament under effective international control, would be enhanced if the development, production and stockpiling of chemical and bacteriological (biological) agents for purposes of war were to end and if those agents were eliminated from all military arsenals, and commended the following basic approach for reaching an effective solution to the problem of chemical and bacteriological (biological) methods of warfare:

(*a*) It is urgent and important to reach agreement on the problem of chemical and bacteriological (biological) methods of warfare,

(*b*) Both chemical and bacteriological (biological) weapons should continue to be dealt with together in taking steps towards the prohibition of their development, production and stockpiling and their effective elimination from the arsenals of all States,

(*c*) The issue of verification is important in the field of chemical and bacteriological (biological) weapons, and verification should be based on a combination of appropriate national and international measures, which would complement and supplement each other, thereby providing an acceptable system that would ensure the effective implementation of the prohibition,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Having considered the report of the Conference of the Committee on Disarmament, [1] in particular its work on the draft Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and its efforts towards reaching early agreement also on the elimination of chemical weapons,

Convinced that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction [2] is a first possible step towards the achievement of early agreement on the effective prohibition of the development, production and stockpiling of chemical weapons and on the elimination of such weapons from military arsenals of all States, and determined to continue negotiations to this end,

Recalling that the General Assembly has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, [3]

Noting that the Convention provides for the parties to reaffirm their adherence to the principles and objectives of that Protocol and to call upon all States to comply strictly with them,

1. *Notes with satisfaction* that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction contains an affirmation of the recognized objective of effective prohibition of chemical weapons and, to this end, an undertaking to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes;

2. *Requests* the Conference of the Committee on Disarmament to continue, as a matter of high priority, its negotiations with a view to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and for their elimination from the arsenals of all States;

3. *Also requests* the Conference of the Committee on Disarmament to take into account in its further work:

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[1] *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234.

[2] Reproduced in this *Yearbook*, p. 118.

[3] League of Nations, *Treaty Series*, vol. XCIV.

(*a*) The elements contained in the joint memorandum on the prohibition of the development, production and stockpiling of chemical weapons and on their destruction, submitted on 28 September 1971 to the Conference by Argentina, Brazil, Burma, Egypt, Ethiopia, India, Mexico, Morocco, Nigeria, Pakistan, Sweden and Yugoslavia; [4]

(*b*) Other proposals, suggestions, working papers and expert views put forward in the Conference and in the First Committee;

4. *Urges* Governments to take all steps that may contribute to a successful outcome of the negotiations of the Conference of the Committee on Disarmament and that could facilitate early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and the elimination of such weapons from the arsenals of all States;

5. *Reaffirms* its resolution 2162 B (XXI) of 5 December 1966 and calls anew for the strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;

6. *Invites* all States that have not already done so to accede to or ratify the Protocol;

7. *Requests* the Conference of the Committee on Disarmament to submit a report on the results achieved to the General Assembly at its twenty-seventh session;

8. *Requests* the Secretary-General to transmit to the Conference of the Committee on Disarmament all documents and records of the First Committee relating to questions connected with the problem of chemical and bacteriological (biological) methods of warfare.

2022nd plenary meeting,
16 December 1971.

B

The General Assembly,

Noting that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction contains an undertaking to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and for their destruction,

Believing that it is most desirable that some measures of a preliminary nature be adopted immediately,

Urges all States to undertake, pending agreement on the complete prohibition of the development, production and stockpiling of chemical weapons and their destruction, to refrain from any further development, production or stockpiling of those chemical agents for weapons purposes which, because of their degree of toxicity, have the highest lethal effects and are not usable for peaceful purposes.

2022nd plenary meeting,
16 December 1971.

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[4] *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234, annex C, sect. 33.

3. URGENT NEED FOR SUSPENSION OF NUCLEAR AND THERMONUCLEAR TESTS: REPORT OF THE CONFERENCE OF THE COMMITTEE ON DISARMAMENT (AGENDA ITEM 29)

Resolutions [2828 A and C (XXVI)] adopted by the General Assembly

2828 (XXVI). Urgent need for suspension of nuclear and thermonuclear tests

A

The General Assembly,

Viewing with the utmost apprehension the harmful consequences of nuclear weapon tests for the acceleration of the arms race and for the health of present and future generations of mankind,

Fully conscious that world opinion has, over the years, demanded the immediate and complete cessation of all nuclear weapon tests in all environments,

Recalling that the item on the question of a comprehensive test ban has been included in the agenda of the General Assembly every year since 1957,

Deploring the fact that the General Assembly has not yet succeeded in its aim of achieving a comprehensive test ban, despite eighteen successive resolutions on the subject,

Noting with regret that all States have not yet adhered to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, signed in Moscow on 5 August 1963, [5]

Deploring the fact that the determination expressed by the original parties to that Treaty to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time has not so far produced the desired results,

Noting with special concern that the continuation of nuclear weapon tests in the atmosphere is a source of growing pollution and that the number and magnitude of underground tests have increased at an alarming rate since 1963,

Having considered the special report submitted by the Conference of the Committee on Disarmament [6] in response to General Assembly resolution 2663 B (XXV) of 7 December 1970,

Recalling its resolution 1762 A (XVII) of 6 November 1962, whereby all nuclear weapon tests, without exception, were condemned,

Convinced that, whatever may be the differences on the question of verification, there is no valid reason for delaying the conclusion of a comprehensive test ban of the nature contemplated in the preamble to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water,

1. *Reiterates solemnly and most emphatically* its condemnation of all nuclear weapon tests;

2. *Urges* the Governments of nuclear-weapon States to bring to a halt all nuclear weapon tests at the earliest possible date and, in any case, not later than 5 August 1973;

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[5] See *Juridical Yearbook*, 1963, p. 107.

[6] *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234, sect. III.

3. *Requests* the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-seventh session of any measures they have taken to implement it.

2022nd plenary meeting,
16 December 1971.

C

The General Assembly,

Recognizing the urgent need for the cessation of nuclear and thermonuclear weapon tests, including those carried out underground,

Recalling that this subject has been included in the agenda of the General Assembly every year since 1957,

Recalling in particular its resolutions 914 (X) of 16 December 1955, 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965, 2163 (XXI) of 5 December 1966, 2343 (XXII) of 19 December 1967, 2455 (XXIII) of 20 December 1968, 2604 (XXIV) of 16 December 1969 and 2663 (XXV) of 7 December 1970,

Expressing serious concern that the objectives of those resolutions have not been fulfilled,

Noting with regret that all States have not yet adhered to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, signed in Moscow on 5 August 1963, and that some continue to test in the atmosphere,

Taking into account the determination expressed by the parties to that Treaty to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time,

Noting the appeal for progress on this issue, made by the Secretary-General in the introduction to his report on the work of the Organization, [7]

Noting with special concern that nuclear weapon tests in the atmosphere and underground are continuing,

Having considered the special report submitted by the Conference of the Committee on Disarmament [8] in response to General Assembly resolution 2663 B (XXV),

1. *Stresses anew* the urgency of bringing to a halt all nuclear weapon testing in all environments by all States;

2. *Urges* all States that have not yet done so to adhere without further delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water and meanwhile to refrain from testing in the environments covered by that Treaty;

3. *Calls upon* all Governments that have been conducting nuclear weapon tests, particularly those of parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, immediately to undertake unilateral or negotiated measures of restraint that would suspend nuclear weapon testing or limit or reduce the size and number of nuclear weapon tests, pending the early entry into force of a comprehensive ban on all nuclear weapon tests in all environments by all States;

4. *Urges* Governments to take all possible measures to develop further, and to use more effectively, existing capabilities for the seismological identification of underground nuclear tests, in order to facilitate the monitoring of a comprehensive test ban;

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[7] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 1A* (A/8401/Add.1).

[8] *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234, sect. III.

5. *Requests* the Conference of the Committee on Disarmament to continue as a matter of high priority, its deliberations on a treaty banning underground nuclear weapon tests, taking into account the suggestions already made in the Conference as well as the views expressed at the current session of the General Assembly;

6. *Requests particularly* Governments that have been carrying out nuclear tests to take an active and constructive part in developing in the Conference of the Committee on Disarmament, or in any successor body, specific proposals for an underground test ban treaty;

7. *Expresses the hope* that these efforts will enable all States to sign, in the near future, a treaty banning underground nuclear weapon tests.

2022nd plenary meeting,
16 December 1971.

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4. STATUS OF THE IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 2666 (XXV) CONCERNING THE SIGNATURE AND RATIFICATION OF ADDITIONAL PROTOCOL II OF THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA (TREATY OF TLATELOLCO): REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 31)

Resolution [2830 (XXVI)] adopted by the General Assembly

2830 (XXVI). Status of the implementation of General Assembly resolution 2666 (XXV) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)

The General Assembly,

Recalling its resolutions 1911 (XVIII) of 27 November 1963, 2286 (XXII) of 5 December 1967, 2456 B (XXIII) of 20 December 1968 and 2666 (XXV) of 7 December 1970,

Recalling in particular that in its resolution 2286 (XXII) it declared that the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) [9] constituted an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security and that in its resolution 2666 (XXV) it repeated the appeals which on two previous occasions it had addressed to the nuclear-weapon States to sign and ratify Additional Protocol II of the Treaty as soon as possible and urged them to avoid further delay in the fulfilment of such appeals,

1. *Reaffirms its conviction* that, for the maximum effectiveness of any treaty establishing a nuclear-weapon-free zone, the co-operation of the nuclear-weapon States is necessary and that such co-operation should take the form of commitments likewise undertaken in a formal international instrument which is legally binding, such as a treaty, convention or protocol;

2. *Notes with satisfaction* that the United States of America deposited its instrument of ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America on 12 May 1971, thus becoming a State party to the Protocol, as the United Kingdom of Great Britain and Northern Ireland has been since 11 December 1969;

[9] See *Juridical Yearbook*, 1967, p. 272.

3. *Deplores* the fact that the other nuclear-weapon States have not yet heeded the urgent appeals which the General Assembly has made in three different resolutions and urges them once again to sign and ratify without further delay Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America;

4. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Implementation of General Assembly resolution 2830 (XXVI) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)";

5. *Requests* the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-seventh session of any measure adopted by them in order to implement it.

2022nd plenary meeting,
16 December 1971.

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5. INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (AGENDA ITEM 33)

Resolution [2776 (XXVI)] adopted by the General Assembly

2776 (XXVI). International co-operation in the peaceful uses of outer space

The General Assembly,

Recalling its resolution 2733 (XXV) of 16 December 1970,

Having considered the report of the Committee on the Peaceful Uses of Outer Space, [10]

Reaffirming the common interest of mankind in furthering the exploration and use of outer space for peaceful purposes,

Continuing to believe that the benefits deriving from space exploration can be extended to States at all stages of economic and scientific development if Member States conduct their space programmes in a manner designed to promote maximum international co-operation, including the widest possible exchange of information in this field,

Convinced of the need for continued international efforts to promote practical applications of space technology,

1. *Endorses* the report of the Committee on the Peaceful Uses of Outer Space;

2. *Invites* States which have not yet become parties to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space to give early consideration to ratifying or acceding to those agreements so that they may have the broadest possible effect;

3. *Reiterates* the importance of the goal of making satellite communications available to States on a worldwide and non-discriminatory basis, as expressed in General Assembly resolution 1721 D (XVI) of 20 December 1961;

4. *Takes note* of the agreements relating to space communications recently concluded between a number of States and of the desirability of keeping the United Nations currently informed concerning activities and developments in this field;

[10] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 20* (A/8420).

5. *Notes* the action taken by the International Telecommunication Union, through the World Administrative Radio Conference for Space Telecommunications held in June and July 1971, to allocate frequencies and to adopt administrative procedures for all kinds of space communications, and recommends that the Union and its specialized bodies, as well as the members of the Union, should apply these provisions with a view to promoting the use of space communications for the benefit of all countries in accordance with the relevant resolutions of the General Assembly;

6. *Welcomes* the progress achieved by the Committee on the Peaceful Uses of Outer Space in its efforts to encourage international programmes to promote practical applications of space technology for the benefit of all countries and commends to the attention of Member States, specialized agencies and interested United Nations bodies the programme contained in the report of the Scientific and Technical Sub-Committee of the Committee; [11]

7. *Takes note with appreciation* of the valuable work carried out by the Secretary-General within the framework of the programme for promoting the application of space technology in accordance with the relevant recommendations of the Committee on the Peaceful Uses of Outer Space and resolutions of the General Assembly;

8. *Endorses* the resolution contained in paragraph 15 of the report of the Committee on the Peaceful Uses of Outer Space and recommends the continuation and development of the programme for promoting the practical applications of space technology taking into account the needs of the developing countries;

9. *Welcomes* the efforts of a number of Member States to share with other interested Member States the practical benefits that may be derived from programmes in space technology;

10. *Welcomes* the progress achieved in international co-operation among Member States in space research and exploration, including the exchange and analysis of lunar material on a broad international basis and studies of the development of compatible rendezvous and docking systems for manned spacecraft;

11. *Welcomes also* the action of a number of States and of the Food and Agriculture Organization of the United Nations in promoting international co-operation in education and training in the peaceful uses of outer space and endorses the appeal made to other States by the Committee on the Peaceful Uses of Outer Space for similar contributions to international education and training in this field;

12. *Approves* continuing sponsorship by the United Nations of the Thumba Equatorial Rocket Launching Station in India and the CELPA Mar del Plata Station in Argentina, expresses its satisfaction at the work being carried out at these ranges in relation to the use of sounding rocket facilities for international co-operation and training in the peaceful and scientific exploration of outer space, and recommends that Member States continue to give consideration to the use of these facilities for appropriate space research activities;

13. *Welcomes* the efforts of Member States to keep the Committee on the Peaceful Uses of Outer Space fully informed of their space activities and invites all Member States to do so;

14. *Notes* that, in accordance with General Assembly resolution 1721 B (XVI) of 20 December 1961, the Secretary-General continues to maintain a public registry of objects launched into orbit or beyond on the basis of information furnished by Member States;

15. *Takes note with appreciation* of the activities of the World Meteorological Organization during the past year, as reported to the Committee on the Peaceful Uses of Outer

[11] A/AC.105/95 and Corr.1, sect. I.

Space, [12] in particular the measures taken in implementation of General Assembly resolution 2733 D (XXV) recommending that the World Meteorological Organization mobilize technical resources in order to discover ways and means of mitigating the harmful effects and destructive potential of tropical storms;

16. *Takes note* of the programmes currently being undertaken by the United Nations Educational, Scientific and Cultural Organization and the International Telecommunication Union in satellite broadcasting for the purpose of contributing to the advancement of education and training, and draws attention to the fact that questions relating to the legal implications of space communications are also on the agenda of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, with which the two agencies should co-ordinate their activities in this field;

17. *Requests* the specialized agencies and the International Atomic Energy Agency to continue, as appropriate, to provide the Committee on the Peaceful Uses of Outer Space with progress reports on their work relating to the peaceful uses of outer space and to examine and report to the Committee on the particular problems which arise or may arise from the use of outer space in the fields within their competence and which should, in their opinion, be brought to the attention of the Committee;

18. *Endorses* the recommendations contained in paragraph 38 of the report of the Committee on the Peaceful Uses of Outer Space concerning the future work of its Legal Sub-Committee;

19. *Requests* the Committee on the Peaceful Uses of Outer Space to continue its work as set out in the present resolution and in previous resolutions of the General Assembly and to report to the Assembly at its twenty-seventh session.

1998th plenary meeting,
29 November 1971.

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6. RESERVATION EXCLUSIVELY FOR PEACEFUL PURPOSES OF THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF PRESENT NATIONAL JURISDICTION AND USE OF THEIR RESOURCES IN THE INTERESTS OF MANKIND, AND CONVENING OF A CONFERENCE ON THE LAW OF THE SEA: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION (AGENDA ITEM 35)

Resolution [2881 (XXVI)] adopted by the General Assembly

2881 (XXVI). Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968, 2574 (XXIV) of 15 December 1969 and 2750 (XXV) of 17 December 1970,

[12] See A/AC.105/PV.100.

Having considered the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, [13]

1. *Notes with satisfaction* the encouraging progress of the preparatory work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction towards a comprehensive conference on the law of the sea, in conformity with its mandate contained in General Assembly resolution 2750 C (XXV), in particular with regard to the elaboration of the international régime and machinery for the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

2. *Notes also* the consideration by the Committee of the reports submitted by the Secretary-General [14] pursuant to resolutions 2750 A and B (XXV) and of the study of possible methods and criteria for the sharing of benefits derived from the exploitation of the resources of the area, [15] undertaken in accordance with the Committee's request of March 1970;

3. *Decides* to add to the membership of the Committee China and four other members to be appointed by the Chairman of the First Committee in consultation with regional groups, with due regard to the interests of under-represented groups;

4. *Requests* the Committee, in the discharge of its mandate in accordance with resolution 2750 C (XXV), to hold two sessions, one in New York during March and April and one at Geneva during July and August 1972.

2029th plenary meeting,
21 December 1971.

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7. RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS (*a*) REPORT OF THE SECRETARY-GENERAL (*b*) PROTECTION OF JOURNALISTS ENGAGED IN DANGEROUS MISSIONS IN AREAS OF ARMED CONFLICT: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 49)

Resolutions [2852 (XXVI), 2853 (XXVI) and 2854 (XXVI)] adopted by the General Assembly

2852 (XXVI). Respect for human rights in armed conflicts

The General Assembly,

Reaffirming its determination to continue all efforts to eliminate the threat or use of force in international relations, in conformity with the Charter of the United Nations, and to bring about general and complete disarmament under effective international control, and reaffirming its desire to secure full observance of human rights applicable in all armed conflicts pending the earliest possible termination of such conflicts,

Reaffirming that, in order effectively to guarantee human rights, all States should devote their efforts to averting the unleashing of aggressive wars and armed conflicts that violate the Charter and the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

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[13] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21* (A/8421).

[14] A/AC.138/36 and A/AC.138/37 and Corr.1 and 2.

[15] A/AC.138/38 and Corr.1.

Recalling the successive resolutions that have been adopted by the United Nations relating to human rights in armed conflicts, in particular General Assembly resolutions 2652 (XXV) of 3 December 1970, 2674 (XXV) and 2678 (XXV) of 9 December 1970 and 2707 (XXV) of 14 December 1970, and taking into account relevant resolutions of international conferences of the Red Cross,

Deeply concerned over the terrible suffering that armed conflicts continue to inflict upon combatants and civilians, particularly through the use of cruel means and methods of warfare and through inadequate restraints in defining military objectives,

Desiring to ensure the effective application of all existing rules relating to human rights in armed conflicts, as well as the development of these rules, and aware that progress in this regard will depend upon the political readiness and willingness of Member States,

Conscious that, although negotiations are going on in the field of disarmament concerning general and complete disarmament and the limitation and elimination of nuclear, biological and chemical weapons, those deliberations do not deal with the question of prohibiting or restricting the use of other methods of warfare that are cruel, such as napalm, or that indiscriminately affect civilians and combatants,

Noting the comments by Governments [16] on the reports of the Secretary-General on respect for human rights in armed conflicts, [17]

Noting with appreciation the report of the Secretary-General [18] on the comprehensive discussions undertaken at the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross,

Having taken cognizance of the report prepared by the International Committee of the Red Cross on the work of the Conference of Government Experts, [19]

Welcoming the dicision of the International Committee of the Red Cross to convene in 1972 a second session of the Conference of Government Experts with broader participation to include all the States parties to the Geneva Conventions of 1949 [20] and to circulate in advance of that session a series of draft protocols,

Stressing the importance of further close co-operation between the United Nations and the International Committee of the Red Cross,

Determined to continue its efforts to achieve better application of existing rules relating to armed conflicts, as well as the reaffirmation and development of these rules,

1. *Calls again upon* all parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907, [21] the Geneva Protocol of 1925, [22] the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts, and invites those States which have not yet done so to adhere to those instruments;

2. *Reaffirms* that persons participating in resistance movements and freedom fighters in southern Africa and in territories under colonial and alien domination and foreign occupa-

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[16] A/8313 and Add.1-3.

[17] A/7720 and A/8052.

[18] A/8370 and Add.1.

[19] *Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, August 1971).

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

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

[22] League of Nations, *Treaty Series*, vol. XCIV.

tion who are struggling for their liberation and self-determination should, in case of arrest, be treated as prisoners of war in accordance with the principles of the Hague Convention of 1907 and the Geneva Conventions of 1949;

3. *Invites* the International Committee of the Red Cross to continue the work that was begun with the assistance of government experts in 1971 and, taking into account all relevant United Nations resolutions on human rights in armed conflicts, to devote special attention, among the questions to be taken up, to the following:

(*a*) The need to ensure better application of existing rules relating to armed conflicts, particularly the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, including the need for strengthening the system of protecting Powers contained in such instruments;

(*b*) The need for a reaffirmation and development of relevant rules, as well as other measures to improve the protection of the civilian population during armed conflicts, including legal restraints and restrictions on certain methods of warfare and weapons that have proved particularly perilous to civilians, and also arrangements for humanitarian relief;

(*c*) The need to evolve norms designed to increase the protection of persons struggling against colonial and alien domination, foreign occupation and racist régimes;

(*d*) The need for development of the rules concerning the status, protection and humane treatment of combatants in international and non-international armed conflicts and the question of guerrilla warfare;

(*e*) The need for additional rules regarding the protection of the wounded and the sick;

4. *Expresses the hope* that the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts will result in specific conclusions and recommendations for action at the government level;

5. *Requests* the Secretary-General, in line with paragraph 126 of his report on respect for human rights in armed conflicts submitted to the General Assembly at its twenty-fifth session, [23] to prepare as soon as possible, with the help of qualified governmental consultant experts, a report on napalm and other incendiary weapons and all aspects of their possible use;

6. *Further calls upon* all States to disseminate widely information and to provide instruction concerning human rights in armed conflicts and to take all the necessary measures to ensure full observance by their own armed forces of humanitarian rules applicable in armed conflicts;

7. *Requests* the Secretary-General to encourage the study and teaching of principles of respect for human rights applicable in armed conflicts by the means at his disposal;

8. *Requests* the Secretary-General to report to the General Assembly at its twenty-seventh session on the results of the second session of the Conference of Government Experts and any other relevant developments;

9. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Human rights in armed conflicts" and to consider it in all its aspects.

2027th plenary meeting,
20 December 1971.

[23] A/8052.

2853 (XXVI). Respect for human rights in armed conflicts

The General Assembly,

Recalling its resolutions 2674 (XXV), 2675 (XXV), 2676 (XXV) and 2677 (XXV) of 9 December 1970,

Noting also that the twenty-first International Conference of the Red Cross, held at Istanbul in 1969, adopted resolution XIII concerning the reaffirmation and development of the laws and customs applicable in armed conflicts, [24]

Noting with appreciation the report of the Secretary-General on respect for human rights in armed conflicts, [25] concerning in particular the results of the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross, as well as the report of the International Committee on the work of the Conference, [26]

Emphasizing that effective protection for human rights in situations of armed conflict depends primarily on universal respect for humanitarian rules,

Recognizing that existing humanitarian rules relating to armed conflicts do not in all respects meet the need of contemporary situations and that it is therefore necessary to strengthen the procedure for implementing these rules and to develop their substance,

Welcoming the decision of the International Committee of the Red Cross to convene a second session of the Conference of Government Experts with the task of reaching agreement on the wording of various texts to facilitate discussion at a future diplomatic conference, and noting that all States parties to the Geneva Conventions of 1949 [27] have been invited to participate,

Affirming that the successful development of humanitarian rules applicable in armed conflicts requires the negotiation of instruments which can be effectively implemented and which command the widest possible support,

Emphasizing the importance of continued close collaboration between the United Nations and the International Committee of the Red Cross,

1. *Reiterates* its call upon all parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907, [28] the Geneva Protocol of 1925, [29] the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts, and invites those States which have not yet done so to adhere to those instruments;

2. *Welcomes* the progress made by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, as shown in its report, with regard to the following questions:

(*a*) Protection of the wounded and the sick;

(*b*) Protection of victims of non-international armed conflicts;

(*c*) Rules applicable in guerrilla warfare;

(*d*) Protection of civilian population against dangers of hostilities;

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[24] See A/7720, annex I, sect. D.

[25] A/8370 and Add.1.

[26] *Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, August 1971).

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

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

[29] League of Nations, *Treaty Series*, vol. XCIV.

(*e*) Strengthening of the guarantees afforded by international humanitarian law for non-military civil defence organizations;

(*f*) Rules relative to the behaviour of combatants;

(*g*) Measures intended to reinforce the implementation, in armed conflicts, of existing international humanitarian law;

3. *Expresses the hope* that the second session of the Conference of Government Experts will make recommendations for the further development of international humanitarian law in this field, including, as appropriate, draft protocols to the Geneva Conventions of 1949, for subsequent consideration at one or more plenipotentiary diplomatic conferences;

4. *Calls upon* States parties to the existing international instruments to review, as a matter of priority, any reservations they may have made to those instruments;

5. *Requests* the Secretary-General:

(*a*) To transmit his latest report, [30] together with any further observations received from Governments as well as the records of relevant discussions and resolutions of the General Assembly, to the International Committee of the Red Cross for consideration, as appropriate, by the Conference of Government Experts at its second session;

(*b*) To report to the General Assembly at its twenty-seventh session on the progress made in the implementation of the present resolution;

6. *Decides* to consider this question again, in all its aspects, at its twenty-seventh session.

2027th plenary meeting,
20 December 1971.

2854 (XXVI). Protection of journalists engaged in dangerous missions in areas of armed conflict

The General Assembly,

Recalling its resolution 2444 (XXIII) of 19 December 1968 concerning, in particular, the studies to be undertaken by the Secretary-General in consultation with the International Committee of the Red Cross and other appropriate international organizations with regard, *inter alia*, to the need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants in all armed conflicts,

Recalling also its resolution 2673 (XXV) of 9 December 1970, in which it expressed its conviction that there was a need for an additional humanitarian international instrument to ensure the better protection of journalists engaged in dangerous missions, particularly in areas where an armed conflict was taking place,

Being aware that the provisions of the humanitarian conventions at present in force do not cover some categories of journalists engaged in dangerous missions and do not correspond to their present needs,

Noting Commission on Human Rights resolution 15 (XXVII) of 24 March 1971, [31] in which the Commission expressed its conviction that there was an urgent need to examine the question of the protection of journalists engaged in dangerous missions, both on humanitarian grounds and in order to enable journalists with due respect for the law to seek, receive and impart information fully, objectively and faithfully in the spirit of the purposes

[30] A/8370 and Add.1.

[31] See *Official Records of the Economic and Social Council, Fiftieth Session, Supplement No. 4* (E/4949), chap. XIX.

and principles of the Charter of the United Nations and the Universal Declaration of Human Rights concerning freedom of information,

Noting Economic and Social Council resolution 1597 (L) of 21 May 1971, in which the Council decided to transmit to the General Assembly the preliminary draft international convention on the protection of journalists engaged in dangerous missions, submitted to it by the Commission on Human Rights, as well as the relevant records of the Commission and of the Council, as a valid basis for the discussion of the Assembly at its twenty-sixth session,

Noting the report of the Secretary-General [32] containing the preliminary draft international convention on the protection of journalists engaged in dangerous missions, the observations received from Governments concerning the preliminary draft and the observations of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross,

Noting with appreciation the report [33] of the Working Group established by the Secretary-General in accordance with Commission on Human Rights resolution 15 (XXVII), and the annexed draft protocol relating to the composition and functions of the International Professional Committee for the Protection of Journalists Engaged in Dangerous Missions referred to in article 3 of the aforementioned preliminary draft convention,

Having considered the observations submitted by some Member States in accordance with Commission on Human Rights resolution 15 (XXVII) and the observations of the Conference of Government Experts as well as the discussions on the item and the alternate draft convention submitted during the debate at the twenty-sixth session of the General Assembly,

1. *Believes* that it is necessary to adopt a convention providing for the protection of journalists engaged in dangerous missions in areas of armed conflict;

2. *Invites* the Economic and Social Council to request the Commission on Human Rights to consider as a matter of priority at its twenty-eighth session the preliminary draft convention contained in Council resolution 1597 (L), taking into consideration the draft conventions submitted by Australia [34] and by the United States of America, [35] and the observations of Governments, [36] as well as all subsequent documents including the draft protocol [37] prepared by the Working Group in accordance with resolution 15 (XXVII) of the Commission;

3. *Further requests* the Commission on Human Rights to transmit its report on its twenty-eighth session to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts at its second session to be convened in 1972 by the International Committee of the Red Cross, in order that the International Committee may submit its observations to the General Assembly at its twenty-seventh session;

4. *Invites* Governments to transmit their observations on that part of the report of the Commission on Human Rights on its twenty-eighth session relating to this question;

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[32] A/8371 and Add.1 and 2.

[33] A/8438 and Add.1

[34] *Official Records of the General Assembly, Twenty-sixth Session, Annexes*, agenda item 49, document A/8589, para. 26.

[35] *Ibid.*, para. 27.

[36] A/8371, annex II; A/8371/Add.1 and 2.

[37] A/8438, annex.

5. *Requests* the Secretary-General to submit the replies received and an analytic report on those replies to the General Assembly at its twenty-seventh session;

6. *Decides* to examine this question as a matter of the highest priority at its twenty-seventh session, taking into consideration the recommendations transmitted to the General Assembly by the Economic and Social Council.

2027th plenary meeting,
20 December 1971.

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8. ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (*a*) INTERNATIONAL YEAR FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (*b*) REPORT OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (*c*) STATUS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 54)

Resolution [2783 (XXVI)] adopted by the General Assembly

2783 (XXVI). Report of the Committee on the Elimination of Racial Discrimination

The General Assembly,

Recalling its resolution 2106 (XX) of 21 December 1965 in which it adopted and opened for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination and invited eligible States under article 17 of that Convention to sign and ratify it without delay,

Stressing the significance of the coming into force of the International Convention on the Elimination of All Forms of Racial Discrimination and of the bringing into being of the Committee on the Elimination of Racial Discrimination, and requesting all States parties to the Convention to give full co-operation to that Committee in order that it may fulfil its mandate under the Convention,

Noting the recommendations contained in Economic and Social Council resolution 1588 (L) of 21 May 1971,

Having received the report of the Committee on the Elimination of Racial Discrimination, [38] established under the International Convention on the Elimination of All Forms of Racial Discrimination, on the second year of its activities,

Expressing its satisfaction at the ratification of or accession to the Convention by 55 States and at the intention expressed by various other States to ratify or accede to the Convention in the near future,

1. *Urges* all States which are not yet parties to the International Convention on the Elimination of All Forms of Racial Discrimination to ratify or accede to the Convention as soon as possible and requests them to report to the General Assembly on the measures taken by them to this effect, on any obstacles that may have been encountered and on any interim measures that have been taken to comply strictly with the principles set out in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and in the Convention;

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[38] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 18* (A/8418).

2. *Takes note with appreciation* of the report of the Committee on the Elimination of Racial Discrimination on the second year of its activities, submitted under article 9 of the Convention;

3. *Draws the attention* of all States to the contents of that report;

4. *Commends* the Committee on the Elimination of Racial Discrimination for its efforts to obtain extensive reports from States parties, as provided in article 9, paragraph 1, of the Convention, as well as information concerning Trust and Non-Self-Governing Territories relating to matters referred to in article 15;

5. *Expresses the view* that the work of the Committee on the Elimination of Racial Discrimination would be facilitated if the reports submitted by States parties conformed with the guidelines laid down by the Committee for that purpose and if the Committee invited States parties to be present at its meetings when their reports are examined;

6. *Recognizes* that the General Assembly's consideration of the reports of the Committee on the Elimination of Racial Discrimination would be facilitated by the inclusion of the criteria used by the Committee when it examines in greater depth the substance of the reports from States parties submitted under article 9 of the Convention;

7. *Draws the attention* of the Trusteeship Council and of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to the report of the Committee on the Elimination of Racial Discrimination and requests them to take appropriate action within their terms of reference in their respective spheres of activity, as expressed in the relevant parts of the report;

8. *Requests* the Secretary-General to transmit to the Committee on the Elimination of Racial Discrimination the records of the discussion on its report at the twenty-sixth session of the General Assembly.

2001st plenary meeting,
6 December 1971.

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9. MEASURES TO BE TAKEN AGAINST NAZISM AND OTHER TOTALITARIAN IDEOLOGIES AND PRACTICES BASED ON INCITEMENT TO HATRED AND RACIAL INTOLERANCE (AGENDA ITEM 57)

Resolution [2839 (XXVI)] adopted by the General Assembly

2839 (XXVI). Measures to be taken against nazism and other totalitarian ideologies and practices based on incitement to hatred and racial intolerance

The General Assembly,

Recognizing that there still exist in the world convinced adherents of nazism and racial intolerance whose activities, if they are not opposed in sufficient time, could bring about a resurgence of those ideologies, which are clearly incompatible with the purposes and principles of the Charter of the United Nations, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination, and that, accordingly, the danger of a revival or a development of new forms of nazism and racial discrimination combined with terrorism cannot be disregarded,

Considering that contemporary manifestations of resurgent nazism, like the earlier ones, combine racial prejudice and discrimination with terrorism, and that in some cases racism has been raised to the level of State policy, as in the case of South Africa,

Believing it essential, in order to remove this threat to the peace and security of peoples and to the realization of basic human rights and fundamental freedoms, to elaborate a series of urgent and effective measures which might be adopted by States with a view to suppressing the revival of nazism and preventing its revival, in any form or manifestation, in the future,

Firmly convinced that the best bulwark against nazism and racial discrimination is the establishment and maintenance of democratic institutions, that the existence of genuine political, social and economic democracy is an effective vaccine and an equally effective antidote against the formation or development of Nazi movements and that a political system which is based on freedom and effective participation by the people in the conduct of public affairs, and under which economic and social conditions are such as to ensure a decent standard of living for the population, makes it impossible for fascism, nazism or other ideologies based on terror to succeed,

Confirming that nazism and other forms of racial intolerance constitute a serious threat to the realization everywhere of human rights and freedoms and the maintenance of international peace and security,

Deeming it essential that the question of measures to be taken to combat nazism and racial intolerance should be kept under constant review by the appropriate United Nations bodies with a view to the timely and immediate adoption of the necessary measures for the complete eradication of nazism from the life of society,

1. *Condemns* all manifestations of the ideology and practice of nazism and racial intolerance, wherever they may occur;

2. *Calls upon* States to take steps to bring to light any evidence of the manifestation and dissemination of the ideology and practice of nazism and racial intolerance and to ensure that they are rigorously suppressed and prohibited;

3. *Invites* all eligible States which have not yet done so to ratify and to accede to the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity as soon as possible, and requests them to report to the General Assembly at its twenty-seventh session on the measures taken by them to comply strictly with the provisions of those Conventions;

4. *Invites* all States Members of the United Nations or members of specialized agencies to review their legislation, in the light of the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, with a view to determining whether, in the light of their circumstances, further legal measures are required to eradicate for all time the danger of a revival of nazism, racial intolerance or other ideologies based on terror;

5. *Urgently calls upon* those States concerned which have not yet done so to take immediate and effective measures, including legislative measures, with due regard to the principles contained in the Universal Declaration of Human Rights, to prevent the activities of Nazi and racist organizations and groups;

6. *Appeals* to all States to prohibit activity by organizations propagating concepts of nazism and racial superiority;

7. *Urges* those States which are unable, for serious constitutional or other reasons, to implement immediately and fully the provisions of article 9 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination—both of which condemn and outlaw all propaganda and all organizations based on ideas or theories of

the superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form—to take measures designed to ensure the speedy disbandment and disappearance of such organizations, these measures to provide, *inter alia*, that:

(*a*) Such organizations should not be allowed to receive financial subsidies from organs of the State, private companies or individuals;

(*b*) Such organizations should not be allowed the use of public premises in which to establish their headquarters or conduct meetings of their members, the use of streets and squares in populated areas for holding demonstrations, or the use of public information media for disseminating propaganda;

(*c*) Such organizations should not be allowed to form militarized detachments on any pretext, and offenders should be subject to prosecution in the courts;

(*d*) Persons employed by the State, particularly in the armed forces, should not be permitted to belong to such organizations;

and all these measures to be taken only in so far as they are compatible with the principles of the Universal Declaration of Human Rights;

8. *Requests* the United Nations Educational, Scientific and Cultural Organization, the International Labour Organisation and other specialized agencies to consider, within their respective spheres of competence, the question of the danger of a revival of the concepts of nazism and racial intolerance;

9. *Appeals* to regional intergovernmental organizations to consider this question at the regional level;

10. *Calls upon* Governments, particularly those which control mass information media of world or continental scope, the United Nations and its various bodies, specialized agencies and international and national organizations to increase public awareness of the danger of a revival of nazism and racial intolerance, especially among young people, by education, by the preparation and dissemination of information on this subject and by recalling the history of nazism and its crimes and of racial intolerance;

11. *Calls upon* all States to take legislative and administrative measures to prevent activities of any kind in favour of nazism and the concept of racial superiority;

12. *Decides* to place the question of measures to be taken against ideologies and practices based on terror or on incitement to racial discrimination or any other form of group hatred on its agenda and under continuing review, and urges other competent organs of the United Nations to do likewise, so that appropriate measures can be taken promptly as required;

13. *Confirms* the principles of international law with regard to the eradication of nazism, and appeals to all States to act in conformity with those principles.

2025th plenary meeting,
18 December 1971.

10. STATUS OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (AGENDA ITEM 63)

Resolution [2788 (XXVI)] adopted by the General Assembly

2788 (XXVI). Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights

The General Assembly,

Having noted the report of the Secretary-General on the status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, [39]

Firmly believing that the entry into force of the International Covenants on Human Rights and the Optional Protocol will greatly enhance the ability of the United Nations to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, and will contribute to the attainment of the purposes and principles of the Charter of the United Nations,

Desirous of making all possible efforts that may be appropriate to assist in hastening the process of ratification and, if possible, in bringing into force those instruments by the twenty-fifth anniversary of the proclamation of the Universal Declaration of Human Rights, in 1973,

1. *Recommends* that Member States should give special attention to possibilities of accelerating as far as possible the internal procedures that would lead to the ratification of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights;

2. *Requests* the Secretary-General, on the basis of communications from Governments, to report to the General Assembly at its twenty-seventh session and at such other times as he may consider appropriate on the progress of the ratification of the Covenants and the Optional Protocol.

2001st plenary meeting,
6 December 1971.

[39] A/8390.

11. QUESTION OF NAMIBIA (*a*) REPORT OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES (*b*) REPORT OF THE UNITED NATIONS COUNCIL FOR NAMIBIA (*c*) UNITED NATIONS FUND FOR NAMIBIA: REPORT OF THE SECRETARY-GENERAL (*d*) APPOINTMENT OF THE UNITED NATIONS COMMISSIONER FOR NAMIBIA (AGENDA ITEM 66)

Resolution [2871 (XXVI)] adopted by the General Assembly

2871 (XXVI). Question of Namibia

The General Assembly,

Having considered the question of Namibia,

Having examined the report of the United Nations Council for Namibia, [40]

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, [41]

Having heard the statements of the petitioners [42] and bearing in mind the views expressed by the representatives of national liberation movements, [43]

Recalling its resolutions 1514 (XV) of 14 December 1960, 2145 (XXI) of 27 October 1966, 2248 (S-V) of 19 May 1967 and subsequent resolutions on the question of Namibia, as well as Security Council resolutions 264 (1969) of 20 March 1969, 269 (1969) of 12 August 1969, 276 (1970) of 30 January 1970 and 283 (1970) of 29 July 1970,

Recalling further the relevant provisions of its resolution 2621 (XXV) of 12 October 1970, containing the programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Bearing in mind the direct responsibility of the United Nations with regard to the Territory of Namibia and its people,

Noting with satisfaction the advisory opinion of the International Court of Justice of 21 June 1971 [44] delivered in response to the request addressed to it by the Security Council in its resolution 284 (1970) of 29 July 1970,

Noting also the provisions of Security Council resolution 301 (1971) of 20 October 1971,

Deeply concerned at South Africa's continued occupation of Namibia in defiance of General Assembly resolution 2145 (XXI) and in flagrant violation of its obligations under the Charter of the United Nations,

Deeply concerned also at the use of the Territory of Namibia by South Africa as a base for taking actions which violate the sovereignty and territorial integrity of independent African States,

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[40] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424).

[41] *Ibid., Supplement No. 23* (A/8423/Rev.1), chaps. V and VII.

[42] *Ibid., Twenty-sixth Session, Fourth Committee*, 1921st, 1922nd, 1945th-1947th, 1950th and 1954th meetings; A/C.4/738 and Add.1 and A/C.4/740.

[43] *Ibid., Twenty-sixth Session, Supplement No. 24* (A/8424), paras. 51-58; and *ibid., Supplement No. 23* (A/8423/Rev.1), chap. V, annex.

[44] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

Considering that the basic condition for the fulfilment of the responsibility of the United Nations towards Namibia is the removal of South Africa's presence from the Territory,

Mindful of the obligations of all Member States under Article 25 of the Charter,

Mindful also that the direct responsibility of the United Nations for Namibia includes the solemn obligation to protect and safeguard the rights and interests of the people of the Territory pending their exercise of self-determination and attainment of independence,

1. *Reaffirms* the inalienable right of the people of Namibia to self-determination and independence, as recognized in General Assembly resolution 1514 (XV) and subsequent resolutions, and the legitimacy of their struggle by all means against the illegal occupation of their territory by South Africa;

2. *Welcomes* the advisory opinion of the International Court of Justice of 21 June 1971, as expressed in paragraph 133 thereof;

3. *Condemns* the Government of South Africa for its continued refusal to put an end to its illegal occupation and administration of the Territory of Namibia and to comply with the pertinent resolutions of the Security Council and the General Assembly;

4. *Further condemns* the Government of South Africa for its continued extension to the Territory of Namibia of the policies of *apartheid*, and for its policies aimed at destroying the unity of the people and the territorial integrity of Namibia through the establishment of separate "homelands" based on racial and tribal distinctions;

5. *Deplores* any support given by any State to South Africa, and by any financial, economic and other interests operating in Namibia, which enables South Africa to pursue its repressive policies in the Territory, and calls for the termination of all such support;

6. *Calls upon* all States:

(*a*) To respect strictly the resolutions of the General Assembly and the Security Council concerning Namibia, and the advisory opinion of the International Court of Justice of 21 June 1971;

(*b*) To refrain from all direct or indirect relations, economic or otherwise, with South Africa, where those relations concern Namibia;

(*c*) Not to recognize as legally valid any rights or interests in Namibian property or resources purportedly acquired from the South African Government after 27 October 1966;

(*d*) To take effective economic and other measures designed to ensure the immediate withdrawal of the South African administration from Namibia, thereby making possible the implementation of General Assembly resolutions 2145 (XXI) and 2248 (S-V);

7. *Invites* the Security Council to take effective measures, in conformity with the relevant provisions of the Charter, to secure the withdrawal by South Africa of its illegal administration from Namibia, and the implementation of the resolutions of the General Assembly and the Security Council designed to enable the people of Namibia to exercise their right to self-determination;

8. *Calls once again* upon South Africa to treat Namibians captured during their struggle for freedom as prisoners of war in accordance with the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, [45] and to comply with the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 [46] and, in this regard, invites the International Committee of the Red Cross to exercise its good offices to secure South Africa's compliance with those Conventions;

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[45] United Nations, *Treaty Series*, vol. 75, p. 135.

[46] United Nations, *Treaty Series*, vol. 75, p. 287.

9. *Requests* all States and the specialized agencies and other organizations within the United Nations system, in co-operation with the Organization of African Unity, to render to the Namibian people all moral and material assistance necessary to continue their struggle for the restoration of their inalienable right to self-determination and independence, and to work out, in active co-operation with the United Nations Council for Namibia and the Organization of African Unity, concrete programmes of assistance to Namibia;

10. *Invites* the specialized agencies to give full publicity, through all media, to the question of Namibia and to the conditions prevailing in the Territory to which their respective spheres of competence are related;

11. *Recommends* the report of the United Nations Council for Namibia [47] to all States and to the subsidiary organs of the General Assembly and other competent organs of the United Nations, as well as the specialized agencies and other organizations within the United Nations system, for appropriate action, in conformity with the relevant resolutions of the General Assembly and the Security Council;

12. *Reaffirms* the direct responsibility of the United Nations in regard to the Territory of Namibia and its obligation to lead the Namibian people to self-determination and independence;

13. *Requests* the United Nations Council for Namibia, in accordance with the provisions of the relevant resolutions of the General Assembly, to continue to discharge its functions and responsibilities, and in particular:

(*a*) To represent Namibia whenever it is required;

(*b*) To continue its consultations, at United Nations Headquarters, in Africa or elsewhere, with the representatives of the Namibian people and the Organization of African Unity;

(*c*) To assume responsibility for the urgent establishment of a short-term and long-term co-ordinated programme of technical and financial assistance to Namibia, as explained in the report of the Secretary-General, [48] in line with the relevant provisions of General Assembly resolution 2248 (S-V);

14. *Notes with appreciation* the recognition by a large number of States of the identity certificates and travel documents issued to Namibians by the United Nations Council for Namibia [49] and once again calls upon all other States which have not yet done so to recognize those documents;

15. *Calls upon* all States to co-operate fully with the United Nations Council for Namibia in its efforts to discharge its responsibilities;

16. *Requests* the Secretary-General, bearing in mind the recommendation of the United Nations Council for Namibia concerning the enlargement of its membership with a view to ensuring broader representation on the Council, [50] to hold consultations among the permanent members of the Security Council and other regional groups not represented on the United Nations Council for Namibia and to report thereon to the General Assembly;

17. *Urges* the Secretary-General, in view of the recommendation of the United Nations Council for Namibia, to undertake the necessary consultations to nominate as soon as possible a full-time United Nations Commissioner for Namibia;

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[47] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424).

[48] A/8473.

[49] See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424), annex I.

[50] *Ibid., Supplement No. 24* (A/8424), para. 197.

18. *Requests* the Secretary-General to continue to provide the necessary assistance and facilities to the United Nations Council for Namibia and to the United Nations Commissioner for Namibia for the discharge of their respective duties and functions;

19. *Requests* the Secretary-General to take the necessary steps to intensify publicity relating to Namibia, and to issue a series of United Nations commemorative postage stamps to publicize the direct responsibility of the United Nations for Namibia;

20. *Requests* the Secretary-General to transmit the present resolution to the competent subsidiary organs of the General Assembly, other organs of the United Nations, the specialized agencies and other organizations within the United Nations system;

21. *Further requests* the Secretary-General to report to the General Assembly at its twenty-seventh session on the implementation of the present resolution.

2028th plenary meeting,
20 December 1971.

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12. STATUS OF THE WORK OF THE INFORMAL JOINT COMMITTEE ON HOST COUNTRY RELATIONS: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 86)

SECURITY OF MISSIONS ACCREDITED TO THE UNITED NATIONS AND SAFETY OF THEIR PERSONNEL (AGENDA ITEM 99)

Resolution [2819 (XXVI)] adopted by the General Assembly

2819 (XXVI). Security of missions accredited to the United Nations and safety of their personnel and establishment of the Committee on Relations with the Host Country

The General Assembly,

Having considered the item entitled "Security of missions accredited to the United Nations and safety of their personnel" and the report of the Secretary-General on the work of the Informal Joint Committee on Host Country Relations, [51]

Drawing attention to its resolution 2747 (XXV) of 17 December 1970, in which it urges the Government of the host country to make certain that the measures taken to ensure the protection and security of diplomatic missions and their diplomatic personnel are adequate to enable permanent missions to the United Nations to perform properly the functions entrusted to them by their Governments,

Expressing its gratitude to the Secretary-General for his valuable contribution to the work of the Informal Joint Committee on Host Country Relations,

Noting with extreme concern the illegal acts of individuals or groups against the inviolability of various missions accredited to the United Nations involving the commission and the repetition of violent and other criminal acts, including in some cases the use of bombs or firearms, against their premises and the residences of their personnel and also the assaults, the uttering of threats and insults against such personnel, and picketing accompanied by violence,

Expressing its deep sympathy with the missions and their personnel that have become the victims of such acts,

[51] A/8474.

Recalling the responsibilities of the Government of the host country with respect to the United Nations and missions accredited to it and their personnel under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, the Convention on the Privileges and Immunities of the United Nations and general international law,

Taking into account the profound concern expressed by representatives of States at the twenty-sixth session of the General Assembly over the perpetration and repetition of violent and increasingly dangerous attacks against the premises of certain missions accredited to the United Nations, and also over the repeated threats and the hostile and intimidating acts against the personnel of these missions, which indicates a deterioration in the security of missions and the safety of their personnel,

Considering that the problems related to the privileges and immunities of the United Nations and to the status of the diplomatic missions accredited to it are of mutual concern to Member States, including the host country, as well as to the Secretary-General,

1. *Strongly condemns* the acts of violence and other criminal acts against the premises of certain missions accredited to the United Nations and against their personnel as being flagrantly incompatible with their status under international law;

2. *Urges* that the Government of the United States of America, the host country of the United Nations, should take all requisite measures to ensure, in conformity with its international obligations, the protection and security of the United Nations Headquarters, of the missions accredited to it and of their personnel, thereby ensuring normal conditions for the performance of their functions;

3. *Calls upon* the Government of the United States of America, in consultation with the Secretary-General, to take all possible measures, including the use of information and publicity, to ensure a favourable atmosphere for the normal functioning of the United Nations and the missions accredited to it;

4. *Notes with appreciation* the assurances given by the representative of the host country that it will intensify in a diligent and energetic manner its efforts to strengthen the protection and safety of the missions accredited to the United Nations and their personnel;

5. *Decides* to establish a Committee on Relations with the Host Country, composed of the host country and fourteen Member States to be chosen by the President of the General Assembly in consultation with regional groups and taking into consideration equitable geographic representation thereon;

6. *Requests* the Secretary-General to participate actively in the work of the Committee on Relations with the Host Country with a view to ensuring the representation of the interests concerned;

7. *Instructs* the Committee on Relations with the Host Country to deal with the question of the security of missions and the safety of their personnel, as well as all the categories of issues previously considered by the Informal Joint Committee on Host Country Relations; the Committee is authorized to study the Convention on the Privileges and Immunities of the United Nations and shall consider, and advise the host country on, issues arising in connexion with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations;

8. *Authorizes* the Committee on Relations with the Host Country to have summary records of its meetings and to convene on a periodic basis and whenever it is convoked by its Chairman at the request of any State Member of the United Nations or the Secretary-General;

9. *Requests* the Secretary-General to solicit the views of Member States with respect to the measures needed to ensure the future security of missions and the safety of their personnel and to transmit such replies to the Committee on Relations with the Host Country;

10. *Requests* the Secretary-General to bring to the attention of the Committee on Relations with the Host Country, if so requested by missions accredited to the United Nations, cases involving infringements of their status;

11. *Requests* the Secretary-General to furnish all appropriate assistance to the Committee on Relations with the Host Country and to bring to its attention issues of mutual concern relating to the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and the Convention on the Privileges and Immunities of the United Nations;

12. *Requests* the Committee on Relations with the Host Country to submit to the General Assembly at its twenty-seventh session a report on the progress of its work and to make, if it deems it necessary, appropriate recommendations;

13. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Report of the Committee on Relations with the Host Country".

2019th plenary meeting,
15 December 1971.

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13. REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FOURTH SESSION (AGENDA ITEM 87)

Resolution [2766 (XXVI)] adopted by the General Assembly

2766 (XXVI). Report of the United Nations Commission on International Trade Law

The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its fourth session, [52]

Recalling its resolution 2205 (XXI) of 17 December 1966 establishing the United Nations Commission on International Trade Law and defining the object and terms of reference of the Commission,

Further recalling its resolutions 2421 (XXIII) of 18 December 1968, 2502 (XXIV) of 12 November 1969 and 2635 (XXV) of 12 November 1970 on the reports of the United Nations Commission on International Trade Law on the work of its first, second and third sessions,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all peoples on a basis of equality and, thereby, to their well-being,

Noting that the Trade and Development Board, at its eleventh session, considered the report of the United Nations Commission on International Trade Law on its fourth session

[52] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17* (A/8417).

and expressed satisfaction with the coordination of the work programmes of the Commission and of the United Nations Conference on Trade and Development in the field of international legislation on shipping, [53]

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its fourth session and commends its members for their contribution to the progress made in the work of the Commission;

2. *Recommends* that the United Nations Commission on International Trade Law should:

(*a*) Continue, in its work, to pay special attention to the topics to which it has decided to give priority, that is, the international sale of goods, international payments, international commercial arbitration and international legislation on shipping;

(*b*) Accelerate its work on training and assistance in the field of international trade law, with special regard to developing countries;

(*c*) Continue to collaborate with international organizations active in the field of international trade law;

(*d*) Continue to give special consideration to the interests of developing countries and to bear in mind the special problems of land-locked countries;

(*e*) Continue, in its use of working groups and other working methods, to seek to enhance its efficiency and to ensure full consideration of the needs of all regions;

(*f*) Keep its programme of work under constant review;

3. *Notes with satisfaction* the publication of the first volume of the *Yearbook of the United Nations Commission on International Trade Law* [54] and the first volume of the *Register of Texts of Conventions and Other Instruments concerning International Trade Law* [55] and authorizes the Secretary-General to publish the second volume of the *Register of Texts* in accordance with the decision of the Commission contained in paragraph 131 of its report;

4. *Requests* the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions at the twenty-sixth session of the General Assembly on the Commission's report on the work of its fourth session.

1986th plenary meeting,
17 November 1971.

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14. REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY-THIRD SESSION (AGENDA ITEM 88)

(a) *Report of the Sixth Committee* [56]

[*Original: English/French*]
[*29 November 1971*]

I. INTRODUCTION

1. At its 1939th plenary meeting, on 25 September 1971, the General Assembly included in the agenda of its twenty-sixth session the item entitled "Report of the International

[53] *Ibid., Supplement No. 15* (A/8415/Rev.1), part three, paras. 417-420.

[54] United Nations publication, Sales No. E.71.V.1.

[55] United Nations publication, Sales No. E.71.V.3.

[56] Document A/8537, reproduced from *Official Records of the General Assembly, Twenty-sixth Session, Annexes*, agenda item 88.

Law Commission on the work of its twenty-third session" (item 88) and allocated it to the Sixth Committee for consideration and report.

2. The Sixth Committee considered this item at its 1255th to 1265th meetings, held from 8 to 21 October 1971, and at its 1279th and 1280th meetings, held on 11 and 12 November 1971.

3. At the 1255th meeting, on 8 October 1971, Mr. Senjin Tsuruoka, Chairman of the International Law Commission at its twenty-third session, introduced the Commission's report on the work of that session (A/8410). The report was divided into five chapters entitled: I. Organization of the session; II. Relations between States and international organizations; III. Progress of work on topics currently under discussion; IV. Question of treaties concluded between States and international organizations or between two or more international organizations; V. Other decisions and conclusions of the Commission.

4. Chapter II of the report contained final draft articles on the representation of States in their relations with international organizations adopted by the Commission, following the revision, in the light of the observations and comments of Member States, Switzerland and secretariats of various international organizations (A/8410/Add.1 and Add.1/Corr.1 and Add.2) and taking into account the relevant resolutions and debates of the General Assembly, of provisional draft articles on the matter prepared by the Commission at its twentieth, [57] twenty-first [58] and twenty-second [59] sessions. The Sixth Committee had before it a note by the Secretary-General (A/C. 6/L.821) indicating the correspondence between the numbers allocated to the articles in the final and provisional drafts.

5. At the 1279th meeting, on 11 November, the Rapporteur of the Sixth Committee raised the question whether the Sixth Committee wished to include in its report to the General Assembly a summary of views expressed during the debate on the item. After referring to paragraph (*f*) of the annex to General Assembly resolution 2292 (XXII) of 8 December 1967, the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject-matter, the report should include a summary of the main trends of opinions which emerged in the course of the debate.

II. PROPOSALS AND AMENDMENTS

6. Uruguay submitted a draft resolution (A/C. 6/ L.825) concerning the problems of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law referred to in chapter V, section D, of the report of the Commission. The draft resolution, which was subsequently withdrawn in favour of the draft resolution referred to in the next paragraph of this report, read as follows:

"*The General Assembly*,

"*Having considered* the report of the International Law Commission on the work of its twenty-third session,

"*Believing* it necessary to continue the codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the United Nations Charter and to enhance the importance of its role in international relations,

[57] See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9*, chap. II, sect. E.

[58] *Ibid., Twenty-fourth Session, Supplement No. 10*, chap. II, sect. B.

[59] *Ibid., Twenty-fifth Session, Supplement No. 10*, chap. II, sect. B.

"*Mindful of the fact* that criminal acts are frequently perpetrated against persons enjoying inviolability under international law, thereby affecting the security of the functions performed by such persons and disturbing normal relations between States,

"*Recognizing* the importance and urgency of adopting suitable measures to prevent and punish such unlawful acts,

"1. *Requests* the International Law Commission to consider the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law and to prepare draft articles regarding such crimes as murder, kidnapping and assaults perpetrated against diplomats and other persons entitled to special protection under international law, with a view to submitting such articles to the twenty-seventh session of the General Assembly;

"2. *Requests* the Secretary-General to invite Member States to submit their comments on the question of the protection of diplomats by 15 March 1972 and to transmit those comments to the twenty-fourth session of the International Law Commission".

7. At the 1279th meeting the representative of Poland introduced a draft resolution (A/C. 6/L.826) sponsored by Canada, Cyprus, Finland, Greece, India, Iran, Japan, Poland, Thailand, Turkey, the United States of America, Upper Volta and Uruguay, later joined by the Central African Republic, Egypt and Tunisia. The text of the draft resolution was identical to that recommended by the Sixth Committee (see paragraph 168 below), except that in section I, paragraph 5, of the operative part of the English text the word "should", which appeared between the words "work", and "decide", was later deleted (see para. 166 below).

8. At the 1280th meeting the representative of Afghanistan proposed an oral amendment to draft resolution A/C.6/L.826 with a view to replacing in the English text the word "should" in section I, paragraph 5, of the operative part by the word "may". The representative of Cameroon proposed to delete that word from the English text. The representative of Afghanistan accepted the revision of the amendment made by the representative of Cameroon.

9. At the 1259th meeting the representative of Uruguay submitted to the Sixth Committee for information a working paper (A/C.6/L.822), prepared for transmission to the Commission, containing the text of a draft convention on the prevention and punishment of crimes against persons entitled to special protection under international law.

III. DEBATE

A. General comments on the work of the International Law Commission and the promotion by the United Nations of the progressive development and codification of international law

10. Several representatives expressed appreciation of the useful work accomplished by the Commission at its twenty-third session, mainly for having completed the preparation of the draft articles on the representation of States in their relations with international organizations. Although due to lack of time the Commission did not examine in depth during the session the five other questions currently under consideration, the Commission's report reflected also the stage achieved to date by the Commission in its work on those areas, auguring well, generally speaking, for further progress in the codification of those questions in the near future.

11. In continuing its work of codification, the Commission was acting as an innovator in the struggle to strengthen the rule of law, in the interest of the international community. Considerable progress had taken place in international law over the last two decades, thanks largely to the Commission's work. The Commission was a useful workshop for

initiating studies by providing basic drafts on matters of international law, frequently adopted with few alterations when submitted to States in plenipotentiary conferences. The Commission's achievements as a whole were highly impressive and clearly testified to the extent to which it had accomplished its object of promoting the progressive development and codification of international law. Its work on the law of the sea and the law of treaties represented two outstanding examples of that. Emphasis should be placed, in particular, on the vital importance of the Vienna Convention on the Law of Treaties, [60] which recognized the existence of rules of *jus cogens* in international law and the invalidity of treaties on the grounds of defective consent. It was to be hoped that the firmly established high traditions of the Commission would be maintained in the future.

12. With reference to the Commission's methods of work, it was noted with satisfaction that the Commission had followed courses which the majority of its members approved. The Commission should feel free to adopt its procedures as circumstances required, such as it had done at its twenty-third session by establishing a small working group. However, it was important to maintain the existing basis of work, which assured every member of the Commission the fullest opportunity to state its views on the matter. The Commission's conclusions should be the result of the consideration by all its members of the matter in question. It was also essential for the views of Member States to be taken into account. Even though that could be a time-consuming task, it nevertheless led to satisfactory results in the long run. Some criticism was, however, expressed of the existing methods of work of the Commission, particularly with regard to the duration of the process of codification of a particular topic. Emphasizing the need for speedier procedures, it was said that shorter sessions devoted to a single topic might achieve quicker and more satisfactory results.

13. The question was raised whether the only conceivable manner of codification and progressive development of a given branch of international law was to be the production of draft articles intended to serve as the basis for an international convention to be concluded through a conference of plenipotentiaries or exceptionally through the General Assembly. In this connexion, it was said by certain representatives that a convention set out the law with a precision which, in some cases, might be excessively rigid and prevent the rules of law from evolving in a manner parallel to the evolution of the social, political or even technological structures on which those rules were based. Furthermore, the fact that a convention bound only those States which were parties to it—unless it had gained sufficiently wide acceptance to be considered as part of customary international law—might seriously limit the scope of the rules set out therein, and consequently jeopardized the effectiveness of the Commission's work. As the scope of international law broadened and the urgency of contemporary requirements became more pressing, different techniques would have to be worked out. Thus, in some cases, according to those representatives, it might be preferable to set out the existing law in a code or in some other non-conventional form. There seemed to be a connexion between the choice of future topics for codification and the process by which the codification of a given topic was to be achieved. The Commission and, where appropriate, the Sixth Committee should therefore consider the fundamental problem of the form the final product should take before embarking on the codification of a topic.

14. A number of representatives emphasized the importance of and expressed gratification at the working relationship between the Sixth Committee and the Commission, which explained much of the progress achieved in the codification and progressive development of international law under the auspices of the United Nations. It was incumbent on the Sixth Committee to indicate the long-term priorities in that work and at the same time to offer its guidance in the future activities of the Commission. In this connexion it was recalled,

[60] See *Juridical Yearbook*, 1969, p. 140.

inter alia, that the idea that the Commission, as a body of independent experts, should not transmit to the Sixth Committee reports on topics of which it had not completed its examination, had been abandoned since 1954-1955, and that since then the Commission's work, even where uncompleted, was annually the subject of thorough discussion in the Committee, which might be regarded as the true guardian of the Commission's interests. Furthermore, many members of the Commission sat on the Sixth Committee as State representatives. The very full reports which the Sixth Committee had traditionally submitted regarding its debate on the Commission's work had become an indispensable working tool for the Commission. The close links between the two bodies should be maintained, and the Committee should spare no effort to that end. If any changes were contemplated in established practices, they should not be the result of arbitrary administrative decisions, but should be fully considered by the Sixth Committee and, if necessary, by the Commission.

15. Referring in particular to the role of the Sixth Committee, some representatives considered that at a time when international law was becoming increasingly important and was assuming even greater prominence in the work of all the Main Committees of the General Assembly, the Sixth Committee had failed to live up to its special responsibilities. During the last few years there had been a proliferation of organs more or less directly concerned with the codification of international law but the Sixth Committee did not occupy the paramount position among them that it should. Instead of merely commenting on the reports presented to it, which covered only a small part of the field of international law, the Sixth Committee would do well to broaden its horizons and contribute to the actual work of codification. In this connexion, it was considered significant by certain representatives that the General Assembly had refrained from entrusting the Sixth Committee and the Commission with the important work of codifying and progressively developing the law on the peaceful uses of outer space and the uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

16. Some representatives drew attention to the report of the Joint Inspection Unit on the programme of recurrent publications of the United Nations (A/8362), which proposed radical changes in recurrent publications of immediate concern to the Sixth Committee. In this respect, emphasis was placed on the Sixth Committee's responsibility to provide the Commission with all the tools it needs for its work. Various criticisms had been made in that report concerning the legal publications of the United Nations. It should not be forgotten, however, that most of those publications were used constantly by the Commission in its work; it should be noted that the Commission had recommended in paragraph 91 of its report on the work of its second session [61] that the General Assembly should authorize the Secretariat to prepare and issue such publications with as wide a distribution as possible; moreover, that recommendation was in line with article 24 of the Statute of the Commission, [62] which provided that the Commission should consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law. The matter was of great importance and should be carefully weighed in the light of the interests of the international legal community. The Committee and, if appropriate, the Commission, should be given the opportunity to study the whole matter before changes were authorized. No decision should be made hastily on the basis of purely bureaucratic considerations.

[61] See *Official Records of the General Assembly, Fifth Session, Supplement No. 12.*

[62] See General Assembly resolution 174 (II), annex.

B. Relations between States and international organizations: draft articles on the representation of States in their relations with international organizations

17. A considerable number of observations were made during the debate with regard to the final draft articles on the representation of States in their relations with international organizations prepared by the Commission. Such observations related to the draft articles as a whole and their specific provisions, as well as to the final phase of the codification of the topic. Most of the representatives who advanced those observations indicated that they were of a general and preliminary character. At an appropriate stage Governments would make known their position in a more detailed and final manner.

1. Observations on the draft articles as a whole

(a) *Importance and need of the codification of the topic*

18. The representatives who spoke on the subject congratulated the Commission for successfully completing its work on the draft articles on the representation of States in their relations with international organizations. Praise was also due to Mr. Abdullah El-Erian, the Special Rapporteur on the topic, for his efforts. The draft articles, which covered the related aspects of the two types of mission to international organizations (permanent missions and permanent observer missions), delegations to organs and to conferences and, in an annex, observer delegations to organs and to conferences, constituted an initial major step towards the progressive development and codification of diplomatic law in its application to relations between States and international organizations, most of which were currently governed by special conventions and agreements and particular established practices. The draft articles represented, on the political plane, a draft which, once embodied in an international instrument, would be of considerable help in establishing stable co-operation among States having different social systems and ensuring the maintenance of international peace and security and respect for law in the world.

19. The fundamental importance of the draft articles could be explained by the increasing role of multilateral diplomacy in the life of States, the many changes taking place in international relations as a result of scientific and technical development, and the steadily increasing responsibilities of intergovernmental organizations within the international community. They followed the codification of the diplomatic law applicable to bilateral relations between States made by the Vienna Convention on Diplomatic Relations, [63] the Vienna Convention on Consular Relations [64] and the Convention on Special Missions [65] which had been adopted on the basis of drafts prepared also by the Commission.

20. Multilateral diplomacy was a relatively new field, and the Commission's draft had had to reflect carefully the differences between this new practice and traditional bilateral diplomacy. The increase in the number of international organizations, the expanding areas of activities of those organizations and the span of time that such activities required had led States to appoint permanent representatives to the United Nations and many other international organizations and to send frequently representatives to the meetings of organs of international organizations and of conferences convened by them. By the time the United Nations had been founded, there was no longer any doubt that permanent missions—perma-

[63] See United Nations Conference on Diplomatic Intercourse and Immunities, 1961, *Official Records*, Vol. II (United Nations publication, Sales No. 62.X.1), document A/CONF.20/13 and Corr.1, p. 82.

[64] See *Juridical Yearbook*, 1963, p. 109.

[65] *Ibid.*, 1969, p. 125.

nent representatives had already been sent to the League of Nations—could be more useful in co-ordinating co-operative efforts within the framework of international organizations.

21. Certain representatives were of the opinion that representatives of States to international organizations should enjoy full diplomatic status, privileges and immunities. Other representatives noted that despite certain similarities, the legal position of representatives of States to international organizations differed from that of representatives of States accredited to another State. Therefore, neither the Vienna Convention on Diplomatic Relations nor the Convention on Special Missions was applicable to the question of the representation of States in their relations with international organizations. On the other hand, it was recalled that the statutes of organizations, as well as existing special conventions and headquarters agreements, were limited to some aspects of the legal status of representatives of States to international organizations. Other aspects were only regulated by established practices evolved within each particular organization or by domestic legislation, particularly of the host States. The inadequacy of that piecemeal system having been demonstrated by the difficulties which had arisen in practice, it therefore became necessary to codify, on a uniform basis, the general diplomatic law applicable to the relations between States and international organizations. Consequently a world-wide codification of the general law on the matter on the basis of the draft articles drawn up by the Commission would be of great practical value towards the smooth functioning of State representation in international organizations and thus of the organizations themselves.

(b) *Scope of the draft articles*

22. During the debate the question of the scope of the draft articles as a whole was analysed by several representatives from the following main standpoints: the legal status of international organizations and of the privileges and immunities of the organizations and of entities and officials under their authority; the role of the host State; the right of representation; the forms of representation; the representation of entities other than States or international organizations; and the types of organizations covered by the draft articles.

23. Some representatives pointed out that the topic of relations between States and international organizations included two aspects: first, the representation of States to those organizations; and second, the representation of international organizations to States, which covered the legal status of the organizations and the prerogatives and immunities of international organizations and of entities and officials under their authority. The draft articles dealt only with the first of those aspects. Support was expressed for the Commission's decision to concentrate on that aspect and defer consideration of the second aspect, which required a different approach. In the opinion of some representatives the second aspect had been more or less covered by previous conventions. Other representatives, however, considered that the Commission should study in the future the legal status of the organizations and the prerogatives and immunities of international organizations and of entities and officials under their authority.

24. Some representatives regretted that the pre-eminent role of the host State, which was referred to in particular in articles 20 to 41 and 51 to 77, was not reflected in the title of the draft, which would more logically read "Draft articles on the representation of States in their relations with international organizations and host States". The purpose of the draft as a whole was not only to regulate the relations between States and international organizations but also to define the status of missions and delegations of sending States in relation to the host State in whose territory the international organization concerned was situated. It was therefore important to make a clear distinction between the relations between the sending State and the international organization, and the relations derived from the juridical position vis-à-vis the host State of the missions and delegations of the sending State. As

regards the status of the host State as a sending State, some representatives supported the position explained in paragraph 53 of the Commission's report, in particular that the privileges and immunities of members of the mission or delegation of the host State should be decided in accordance with the internal law of that State.

25. The opinion was expressed that, although the draft articles did cover diplomatic law applicable to representation of States in international organizations, and particularly the question of privileges and immunities to be granted to such representations, neither article 2, on the scope of the articles, nor the rest of the draft dealt with every aspect of the matter, particularly the vital question of the right of States to be represented. The title of the draft did not, therefore, correspond exactly to the subject-matter of the draft. Current practice tended to fall back for that question on the relevant rules of the organizations concerned; however, if that approach was accepted, other questions such as privileges and immunities could also fall back on the conventions and agreements concluded between organizations and States, without the necessity for drafting a general convention on the matter. The problem of the right of representation to international organizations and conferences of universal character, which was being raised in the United Nations itself with regard to the representation of certain States, could no longer be postponed. The basis of that right was essentially legal, and the only way of overcoming the present difficulties in international relations was to study it from the legal point of view. Consequently, in order to complete its studies of relations between States and international organizations, the Commission should once more examine the question of the right of representation of States in addition to that of the representation of international organizations to States.

26. In the view of some representatives, although the title of the draft referred to representation of States in their relations with international organizations, the bulk of its provisions dealt with inter-State relations in the strict meaning of the term, albeit in respect of their membership of an organization. The structure of the draft articles took into account the different possible forms of State representation. A State could be represented either permanently or temporarily, as a member, or as an observer. That classification did not, however, include another form of representation in State-organization relationships, namely that of special missions or delegations sent to negotiate with the organization itself. That was a serious gap, since the case often arose in practice.

27. Some representatives expressed regret that the draft articles did not include some provisions on representatives of entities other than States (e.g. representatives of national liberation movements) and disagreed with the view expressed on that point in paragraph 54 of the Commission's report. Such representatives were more akin to representatives of States than to representatives of international organizations. An attempt should be made to devise rules under which representatives of liberation movements could discharge their functions satisfactorily and in safety.

28. Several representatives observed with satisfaction that the Commission included in the draft an article, namely article 79, dealing with non-recognition of States or Governments or absence of diplomatic or consular relations. It was also noted with approval that the Commission had decided it was inadvisable to deal in the draft with the possible effect of armed conflict on the representation of States in view of the extreme complexity of the issue.

29. The limitation of the draft articles to the representation of States in their relations with international organizations of "universal character" was generally endorsed (see also specific comments on article 1, paragraph 1, sub-paragraph (2), in paragraph 52 below). The suggestion was, however, made that the topic of regional organizations should be studied at a later stage by the Commission taking into account that wide latitude should be given to those organizations in determining their relations with Governments.

(c) *The question of the protection of the interests of the sending and host States* [66]

30. A number of representatives expressed the hope that the provisions relating to the host country would be revised, since the draft seemed to give the host State many obligations and few rights; its prior consent for the establishment of a mission or appointment of a representative was not required, nor did it have the possibility of safeguarding its security and the maintenance of order by expelling or declaring *persona non grata* a person who had seriously violated its laws. The interest of host States should be carefully borne in mind so as not to create unnecessary burdens for them. Some representatives considered that the relevant provisions should be made more flexible, in order to establish a just balance between the interests of the host State and the functional needs of the sending State.

31. Other representatives, however, saw no justification for the criticisms of various provisions of the draft on grounds relating to the security of the host State. It should not be forgotten that the host State could exercise real control over the international organization by abusing rights, since it had at its disposal all the legal machinery for repression. In any case it should be noted that the host State voluntarily assumed that role, since a State could refuse to become a host State if it so decided. In the view of some representatives the draft articles established a fair balance between the interests of the sending State and those of the host State, whose responsibilities were offset by the moral and material advantages accruing to a State which served as host to an international organization. The draft tried to preserve the independence of international organizations while safeguarding the security of the host State.

32. It was also said that two essential requirements should be taken into consideration, namely to ensure the unhampered exercise of the functions of the missions and delegations of the sending State and to respect the sovereignty of the host State and non-interference in its domestic affairs as well as its right not to allow those principles to be violated by acts contrary to the diplomatic function.

(d) *Missions and delegations covered by the draft articles and the annex thereto*

33. The inclusion in the draft articles of provisions concerning permanent missions and delegations did not give rise to any objection. Some representatives approved expressly the regulation by the draft articles of the status of permanent missions and delegations to organs and to conferences. The draft thus filled a legal gap which was all the more serious because of the need for a permanent relationship between the organization and its members and the fact that the number of conferences and organs, as also the length of their sessions, was constantly increasing. Different views were, however, expressed with regard to the regulation in the draft and its annex of the status of permanent observer missions and observer delegations.

34. Certain representatives were gratified that a legal basis had been provided for State representation through permanent observer missions by bringing their establishment within the rules applicable to diplomatic relations. This was a matter of particular importance to new States. Besides, until the principle of universality was fully applied, non-member States should be allowed to follow the work of the organization closely. The provisions concerning permanent observer missions would permit truly universal participation in the work of international organizations. In this connexion, the view was expressed that the rule whereby some international organizations did not accept observers was understandable if it was applied on a general basis, but that it was totally unacceptable if it was applied according to a discriminatory principle. It was to avoid such discrimination that article 5,

[66] See also below comments on facilities, privileges and immunities accorded by the draft articles as a whole and on specific provisions, particularly on articles 75, 81 and 82.

paragraph 2, and article 80 had been included in the draft. The view was also expressed that the institution of permanent observer missions would exist as long as certain States were denied access to international organizations of universal character. Finally, it was pointed out that because of the latitude afforded by article 4, the provisions on permanent observer missions might be ineffectual, since they could be unwelcome to host States. Some representatives noted with gratification that the Commission had not established too clear a distinction between permanent missions and permanent observer missions. However, it would have been preferable to state explicitly in the draft articles that any problems presented by the two types of missions should be approached from the same viewpoint.

35. Some representatives considered that permanent observer missions should enjoy a legal status only if express provision for such status was made in the multilateral instruments applicable to the organization or in the agreement between the organization and the host State. They were not convinced of the need to formulate general rules placing permanent observer missions of non-member States on more or less the same footing as the permanent missions of member States, as had been done in the draft by the consolidation of the provisions relating to both types of mission. The participation of member States was essential to the realization of the objectives of an organization, while the activities of non-member States were not. Certainly, contact between international organizations and non-member States was useful and certain facilities should be accorded to promote such contact, but the basic distinction should be preserved. After all, the maintenance of permanent observer missions was not prevalent outside the United Nations and their status was determined merely by practice. For those reasons consideration might be given to two separate conventions, one dealing with the representation of member States in their relations with international organizations and the other with non-member States. The latter could take the form of an optional protocol. Adoption of that suggestion would obviate the difficulties in question and facilitate the accession of a greater number of States to the proposed convention.

36. Several representatives expressed gratification that the Commission had been able to consider the question of observer delegations to organs and to conferences and to draw up, in accordance with the wishes expressed by certain Governments, a set of rules thereon which had been annexed to the draft articles. The annex, without which the draft would have been incomplete, represented a new and valuable contribution to the codification of international law in the area covered by the draft. Some of those representatives regretted, however, that observer delegations had been relegated merely to an annex and that the Commission had not drawn up more detailed rules on the subject. Other representatives expressed reservations regarding the desirability or necessity of drawing up rules concerning observer delegations. It was indicated in this connexion that many of the comments critical of the draft articles applied with equal force to the provisions of the annex.

37. The representatives who spoke in favour of formulating rules regarding observer delegations indicated that observer delegates, although not belonging to a mission or an embassy, were none the less representatives officially designated by their Governments. In addition, the provisions of the annex had an important role to play in enabling States which were not yet members of international organizations to follow the work of those organizations. Also, the codification of the rules concerning observer delegations was essential in order to enable the representatives of national liberation movements and of peoples that were victims of colonialism, racial discrimination and *apartheid* to participate in international life in an appropriate way.

(e) *Facilities, privileges and immunities accorded by the draft articles*

38. Three main trends emerged, generally speaking, from the debate with regard to the question of the facilities, privileges and immunities of missions and delegations. A

first group approved the standpoint taken by the Commission for the formulation of the corresponding articles of the draft. A second group endorsed that standpoint in general but insisted on the assimilation to the full range of diplomatic privileges and immunities. Lastly, a third group expressed reservations about the Commission's approach by considering that it implied an unjustified departure from the basic criterion of "functional necessity".

39. Some representatives considered that the Commission had been wise in applying, in a selective manner, the principles of "functional necessity" and of "representative character" to the question of the facilities, privileges and immunities of missions and delegations. Thus, a fair balance had been achieved between the functional and the representational approach. There was no theoretical or practical reason for establishing a distinction between the privileges and immunities of representatives of States according to whether their functions were concerned with bilateral or multilateral diplomacy. By following as far as possible the privileges and immunities provided for in the Vienna Convention on Diplomatic Relations and the Convention on Special Missions the draft safeguarded the interests of the sending State. At the same time, the draft provided means by which the host State could exercise the necessary control on foreign agents residing in its territory. Although different from the safeguards offered in the case of bilateral diplomacy, in view of the different nature of the relations between the sending State and the host State in the context of the diplomatic law relating to international organizations, those safeguards were appropriate for securing the protection of the host State. It was also said that the reason why the Convention on Special Missions had not yet come into force was not the extent of the privileges and immunities accorded thereby but rather the very nature of the rules codified by the Convention and its *modus operandi*.

40. Other representatives supported the approach generally followed by the Commission, namely to base in principle the formulation of the facilities, privileges and immunities of missions and delegations to international organizations and conferences on the corresponding articles of the Vienna Convention on Diplomatic Relations and the Convention on Special Missions. They stressed, however, that the representative character and functions of those missions and delegations justified the general trend in contemporary international relations of granting them the full range of diplomatic privileges and immunities, without discrimination and independently of their permanent or temporary nature. Full diplomatic privileges and immunities would help to ensure the undisturbed performance by the missions and delegations of their functions by protecting them against serious breaches of privileges and, therefore, would contribute to the attainment of the objectives of the organization concerned. The host State was required to assume certain responsibilities because it had given its consent to establishing the organization in its territory, but the privileges and immunities of the missions and delegations should be defined in terms of the sending State's relations with the organization.

41. Other representatives considered that the objective criterion of functional necessity, embodied in Article 105 of the Charter of the United Nations, rather than theories based on the representative character or on unjustified parallels, should be the point of departure for according facilities, privileges and immunities to missions and delegations. The formulation of those privileges and immunities should not depart from existing rules and practices of the United Nations and specialized agencies. It was recalled that in the case of multilateral diplomacy the principle of reciprocity could not come into play. The Commission had gone too far in the development of international law in the matter without producing sufficient justification. They felt that the general trend in the international community was to restrict rather than enlarge the categories of persons enjoying privileged treatment and also to limit the extent of privileges and immunities granted. In many countries there was public and parliamentary resistance to the proliferation of organizations and individuals entitled to

special privileges. A realistic approach could not but facilitate the ratification of the proposed convention by many countries. Some representatives considered that it would perhaps be wise to stress the notion of protection and facilities rather than that of privileges and immunities. Lastly, certain representatives questioned the need to lay down a scale of privileges and immunities for international organizations in general.

42. Some representatives welcomed that the draft equated in general the facilities, privileges and immunities of permanent missions to international organizations with those of permanent diplomatic missions codified in the Vienna Convention on Diplomatic Relations. They considered it justified on the basis of the functional necessity and in the light of existing practices and principles underlying international agreements concerning relations between States and international organizations. Certain representatives regretted that the privileges and immunities extended to permanent missions in the draft were somewhat more limited than those generally accorded by diplomatic law to representatives of States. Finally, other representatives considered it sufficient to find a formula which would ensure the independence of the permanent missions without going so far as to grant them diplomatic status. In their view the principal role of permanent missions was to fulfil the functions which the State appointing them exercised, together with other States, within the framework of a given international organization; such functions were not the same as those involved in the relations between two sovereign States.

43. Some representatives expressed misgivings about the scope of facilities, privileges and immunities accorded to permanent observer missions. They pointed out that the draft in most cases granted the same privileges and immunities to permanent missions and permanent observer missions regardless of the differences between the functions of the two types of mission. In their opinion permanent observer missions of non-member States should not be placed on the same footing as permanent missions of member States. They should only enjoy such privileges and immunities as were necessary for their functioning. In support of that point of view it was said that permanent observer missions did not participate in the work of the organization, were not represented in the organization, did not have the same representative capacity as permanent missions and a treatment on a basis of reciprocity could not apply to them. As a possible course of action it was suggested to grant permanent observer missions limited privileges and immunities, leaving anything further to be negotiated between the organization concerned and the host State.

44. Other representatives stressed that permanent observer missions should enjoy similar privileges and immunities to those of permanent missions because it was required by the exercise of their functions. Moreover, in both cases what was involved was representation of the sending State and there was thus no justification for drawing any distinction between the two types of mission. It was also recalled that an appropriate regulation of the status of permanent observer missions would help those newly-independent States which lacked the resources to maintain a wide network of permanent missions. Finally, the view was expressed that the privileges and immunities accorded by the draft to permanent observer missions might appear to be too extensive, but weighty arguments existed in favour of equal treatment for both types of mission. Thus, like permanent missions, permanent observer missions stayed continuously in the host State, and although their representative functions might be lesser, it was important that their relations with the organization should remain undisturbed.

45. The facilities, privileges and immunities granted in the draft to delegations were considered by some representatives as going beyond what was warranted by their functional needs and existing rules and practice on the matter. In their view, the Convention on the Privileges and Immunities of the United Nations [67] and the Convention on the Privileges

[67] See General Assembly resolution 22 A (I).

and Immunities of Specialized Agencies [68] provided an adequate point of reference and should be regarded, as a general rule, as the maximum standard for privileges and immunities enjoyed by delegations. Other representatives noted with satisfaction that the draft accorded to delegations, in their capacity as representatives of States, the privileges and immunities necessary for the discharge of their functions. Those representatives found no justification for the theory that "permanent missions had a representative character whereas delegations to organs of international organizations, as for instance the General Assembly, or conferences had merely a functional character.

46. Some representatives considered that no distinction should be made between the treatment accorded, on the one hand, to missions and delegations and, on the other, to observer delegations, and criticized the provisions of the annex which made such a distinction to the disadvantage of observer delegations. Other representatives saw no need to grant observer delegations a régime as liberal as that which would be granted under the annex. The proposed privileges and immunities not only exceeded the requirements of observer delegations but were also inconsistent with the practice of international organizations belonging to the United Nations family. Only those features of the annexed draft articles could be endorsed which granted functional facilities, privileges and immunities.

(f) *Structure of the draft articles*

47. A number of representatives expressed agreement with the structure of the draft which, in their opinion, represented a considerable improvement over previous versions. The original number of articles had been appreciably reduced, making it a shorter and clearer draft, and its provisions were set out in a logical and practical manner. Several representatives approved in particular the consolidation of the provisions concerning permanent missions and permanent observer missions, which had made the draft a remarkably concise text. It was also noted with approval that the draft articles followed *mutatis mutandis* the same arrangement for all the representatives of States with which it dealt.

48. Some representatives, however, considered that the structure of the draft articles was susceptible of improvement. Thus, reservations were expressed by certain representatives as regards the consolidation of the provisions concerning permanent missions and permanent observer missions, since it had obscured the essential differences between the obligations and functions, and consequently the needs, of the two kinds of missions. It was also said that some work would still have to be done on the draft articles to make them more precise, by defining more clearly the scope of some of those articles, to eliminate needless duplication and redundancy and to harmonize the legal terminology in related provisions of various articles. For instance, it was observed that a certain amount of repetition still seemed to remain in parts II and III of the draft in respect of provisions relating to immunities and privileges. It was also said that it should be possible to consolidate further the two sets of those provisions while retaining only a limited number of articles to allow for the differences. If it was finally decided to incorporate the annex concerning observer delegations into the draft articles, an additional drafting effort should be made so as to avoid repetitions wherever possible.

49. Some representatives endorsed the initiative taken by the Commission in dividing the draft into parts, sections and articles and giving headings to them. It was, however, observed that the structure of the draft articles could be organized differently, namely according to the specific role played by each article within the internal logical structure of the draft as a whole. Thus, it was indicated from that standpoint, the articles might be divided into three major parts. The first part would include all the articles dealing with

[68] See General Assembly resolution 179 (II).

rights—privileges and immunities—and obligations of the sending States and the rights and obligations of the host State. The second part would comprise the articles relating to the application of the instrument, establishing its scope, as did articles 2, 3 and 4, and machinery for its effective application, such as that in articles 81 and 82. The third and last part would bring together the articles relating to the functions of missions and delegations.

2. COMMENTS ON SPECIFIC PROVISIONS OF THE DRAFT ARTICLES

50. A certain number of tentative comments were made during the debate on particular articles of parts I-IV of the draft. Some representatives agreed expressly with the Commission's decision to delete certain provisions which had been included in the provisional draft, particularly as regards single representation and the establishment of offices of missions elsewhere than in the host State. No comments were advanced on the provisions of the annex (Observer delegations to organs and to conferences), except occasionally and in connexion with similar terms used or provisions included in the draft articles themselves.

Part I. Introduction

Article 1 (Use of terms)

51. Certain representatives considered that the definition of the expression "international organization of universal character" could be improved by making it more specific. Some observed that a mission or delegation to an international organization which did not have the characteristics mentioned in article 1, paragraph 1, subparagraph (2) could not avail itself of the status envisaged in the draft articles. It was also added that that status should be granted not to missions or delegations to all existing world organizations but solely to missions or delegations to organizations of universal character whose activities were of great importance for the world community and of such a nature that the functions of the missions or delegations required that they should have such status.

52. Others were in favour of widening the scope of the definition of the expression "international organization of universal character" given in article 1, paragraph 1, subparagraph (2), or, at least, of avoiding restrictive interpretations of such a definition. Thus, it was mentioned that it might be advisable to consider whether the word "universal", which should include all States and could admit of no exceptions, would be actually applicable to any international organization in existence—independently of the fact that some of them potentially could admit all States to membership—and, consequently, whether it might not be preferable either to substitute a different word or approach the definition in a different way altogether. It was also suggested to depart from purely geographical criteria and to lay more stress on the general nature of the functions carried out by the States members of the organization concerned. In this connexion, it was pointed out that in the light of the present definition of the expression it was not clear whether the draft articles were supposed to apply to the United Nations Office at Geneva, the regional economic commissions and the various regional offices of specialized agencies. Finally, the view was also expressed that universality was the essential element of the definition and that therefore article 1, paragraph 1, subparagraph (2), should stress it by indicating that international organizations of a universal character were open to all States without discrimination, in the exercise of their right to participate in international co-operation.

53. With regard to the term "organ", it was noted that the definition in article 1, paragraph 1, subparagraph (4), included the exceptional case where an organ had both States and individuals as members. Certain representatives indicated that the definition of the term "organ" should also cover the case of organs where members were elected by States, but served in their individual capacity.

54. Finally, the definition of the expression "members of the diplomatic staff" was considered particularly important by certain representatives. They recalled that a definition similar to that embodied in article 1, paragraph 1, subparagraph (22), of the draft articles had been added by the Sixth Committee to the Convention on Special Missions in order to make diplomatic treatment applicable to advisers and experts who, while not holding a rank established by the traditional classification of diplomatic personnel, nevertheless performed functions of a kind justifying such treatment. Opposition was also expressed to any enlargement of the notion of "diplomatic staff" and of the privileges and immunities accorded thereto.

Article 2 (Scope of the present articles)

55. As to the scope of application of the draft articles, it was generally agreed that the formula worked out by the Commission was satisfactory in so far as it would make the draft applicable to the representation of States in their relations with international organizations of universal character and to their representation at conferences convened by or under the auspices of such organizations but, at the same time, left it open to States to decide to apply the provision of the draft in respect of international organizations of non-universal or regional character and to conferences convened by or under the auspices of such organizations.

56. Considering that the meaning of the concept "international law" referred to in article 2, paragraphs 2 and 3, was unclear, it was said that those paragraphs should be deleted from the article. It was also indicated that in article 2 the expression "international organizations with universal concerns" should be used instead of the expression "international organizations of universal character". Such a change would entail a corresponding modification in article 1, paragraph 1, subparagraph (2), of the draft articles.

Article 3 (Relationship between the present articles and the relevant rules of international organizations or conferences) and article 4 (Relationship between the present articles and other international agreements)

57. Some representatives underlined that articles 3 and 4 gave a certain flexibility to the application of the uniform régime established in the draft and welcomed the fact that, as drafted, the provisions of those articles would safeguard the relevant rules of particular international organizations or conferences as well as existing or future international agreements between States or between States and international organizations of universal character. Others stated that if the convention to be elaborated on the basis of the draft articles was to be really effective it must become the law in the relations between States and international organizations and should take precedence over the rules and agreements that existed when it came into force.

58. With regard to article 3, certain representatives expressly endorsed the approach of the Commission to the matter as well as its understanding that the expression "relevant rules of the Organization" should include all relevant rules and established practices. Recalling that the statutes and other basic instruments of certain international organizations made their rules incapable of derogation by extraneous agreements, those representatives considered that each organization should be free to establish and develop its own rules according to its functional needs and context. Others pointed out that the relevant rules of international organizations of universal character should be applicable only to the extent to which they did not contravene the principle of universality and the obligation to ensure equal rights of representation, without any discrimination, for all States.

59. Several representatives noted with satisfaction that, as provided for in article 4, the draft articles were without prejudice to existing international agreements and did not preclude the conclusions of future agreements on the same subject-matter. However,

the view was also expressed by others that by reserving existing international agreements, particularly headquarters agreements and conventions on privileges and immunities of international organizations, article 4 left actually only questions of secondary or academic importance to be governed by the proposed convention.

60. Certain representatives said that problems of incompatibility between the rules laid down in existing agreements and the draft articles might arise unless steps were taken to define the latter as precisely as possible. In this regard, the view was expressed that the proposed convention should supplement agreements already in force only to the extent that the convention would be made applicable to any given organization by virtue of a special agreement. On the other hand, it was observed that until the proposed convention came into effect universally, the rights and obligations of the States Parties to earlier international agreements in force and to the new convention should be governed by the rules relating to the application of successive treaties relating to the same subject-matter, as provided for in article 30 of the Vienna Convention on the Law of Treaties. [69]

Part II. Missions to international organizations

Article 5 (Establishment of missions)

61. It was generally considered that the provisions of article 5 would promote international co-operation. Some representatives underlined that according to paragraphs 1 and 2 of the article neither type of mission, namely permanent missions of member States and permanent observer missions of non-member States, could be established as of right, but only if and to the extent that the organization consented to it in accordance with its rules. This was particularly welcomed by certain representatives with regard to permanent observer missions. Stressing that every non-member State had a right to establish a permanent observer mission to an international organization of universal character, certain representatives said that paragraph 2 of the article could be improved by providing that any non-member State might establish a permanent observer mission to an international organization of universal character if the member States had the right to have permanent missions.

Article 6 (Functions of the permanent mission) and article 7 (Functions of the permanent observer mission)

62. Some representatives expressed satisfaction at the fact that the draft had two separate articles on the respective functions of the permanent missions and of the permanent observer missions and agreed generally with the present drafting of articles 6 and 7. Certain representatives considered that those articles did not solve adequately all the problems involved in the matter they covered and that the formulation of some of the functions enumerated therein should be improved.

63. So far as article 6 was concerned, the functions of ensuring the representation of the sending State to the organization (subparagraph (*a*)), negotiating with or in the organization (subparagraph (*c*)) and promoting co-operation for the realization of the purposes and principles of the organization (subparagraph (*e*)) were singled out by some representatives as particularly important. The view was expressed that subparagraph (*a*) of the article did not clearly define the representative function of a permanent mission in all the complexity it might involve in the case of representation in an international organization. When exercised in an international organization, the representative function was not uniform in nature as in bilateral diplomacy. An international organization might be considered as a single entity with which the State established a series of relations of a bilateral nature, or as

[69] See foot-note 60.

the outcome of joint action by all the member States of which it was made up, in which case the State was not represented, in the strict sense, in the organization but was in fact a part of it. In other cases a State was represented in an organization through persons who did not act as representatives of the State but as members or officers of an organ at the service of the organization. Finally, it was added that the omission of the function of diplomatic protection should also be reconsidered.

64. So far as article 7 was concerned, certain representatives pointed out that the article rightly emphasized the representative nature of such missions, while others were opposed to any tendency to confuse the status of representatives with that of observer, for example, by the use of the word "representation" in subparagraph (*a*) of the article. Doubts were expressed by others concerning the wisdom of distinguishing between the negotiating function of both types of missions by providing in subparagraph (*c*) that a permanent observer mission could negotiate "with" the organization and not "with or in" the organization as in subparagraph (*c*) of article 6. In their view, non-member States needed to negotiate with member States just as much as the latter needed to negotiate with each other. It was said that the words "when required" in subparagraph (*c*) of article 7 were unnecessary in the light of articles 3 and 4 of the draft. Finally, certain representatives underlined the importance of article 7 for its implied recognition of the principle of universality in the activities of international organizations of universal character.

Article 8 (Multiple accreditation or appointment)

65. It was said that the future convention on the representation of States in their relations with international organizations should be a self-contained and autonomous unit and that, therefore, it would be preferable to make mention in article 8 of concurrent accreditation in respect of diplomatic missions to States, or of a consular post, and missions to organizations although the performance by diplomatic agents and consular officers of representative functions to or in an international organization had already been regulated by the Vienna Conventions on Diplomatic Relations and on Consular Relations, as explained by the Commission in the commentary to article 74.

Article 9 (Appointment of the members of the mission)

66. The view was expressed that the freedom of sending States to select the members of their missions, like all other freedoms, could not be absolute. A host State could not tolerate, for example, that a member of a diplomatic mission expelled from his territory as *persona non grata* for being engaged in espionage activities could return shortly after as a member of the mission of his country to an international organization. The same observation would apply to article 43 (Appointment of the members of the delegation) and article 76 (Entry into the territory of the host State).

Article 11 (Accreditation to organs of the organization)

67. It was said that the expression "observer delegate" in article 11, paragraph 3, seemed, at first sight, a contradiction in terms. [70]

Article 15 (Notifications)

68. It was considered surprising that article 15, paragraph 1 (*b*), required the sending State to notify the organization of the arrival and final departure of "any person belonging to the family of a member of the mission" and not only of those members of his family who enjoyed privileges and immunities, namely those forming part of his household.

[70] The expression "observer delegate" is used in article A (Use of terms) of the draft articles on observer delegations to organs and to conferences annexed to the Commission's report.

Article 16 (*Chargé d'affaires* ad interim)

69. Certain representatives considered that to introduce the concept of chargé d'affaires *ad interim*, a well-established notion in bilateral diplomacy, into the realm of multilateral diplomacy might lead to confusion. Noting that the corresponding article of part III of the draft, namely article 48, by using the term "acting head of the delegation" adhered more closely to the terminology normally used in multilateral diplomacy, they indicated that perhaps it would be more appropriate to follow *mutatis mutandis* the same terminological approach for missions in article 16.

Article 17 (*Precedence*)

70. It was said that article 17 did not serve any useful purpose and was therefore unnecessary.

Article 19 (*Use of flag and emblem*) *and article 20* (*General facilities*)

71. On the basis of their respective functional needs the above articles establish a distinction between the treatment accorded to permanent representatives and permanent observers (article 19, paragraphs 1 and 2) and to permanent missions and permanent observer missions (article 20, paragraph 1). Certain representatives criticized such a distinction, while others approved it. (See also comments on article 51 in paragraph 88 below.)

Article 21 (*Premises and accommodation*)

72. It was suggested to amend article 21, paragraph 1, to read: "The host State shall facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for the mission."

Article 22 (*Assistance by the organization in respect of privileges and immunities*)

73. Stressing that the obligation of the organization to assist the sending State, the mission and the members of the mission was fairly obvious and that article 20, paragraph 2, attached no reservation to that obligation, it was considered that the words "where necessary" should be deleted from article 22.

Article 23 (*Inviolability of the premises*)

74. Some representatives expressed serious reservations with regard to the last sentence of article 23, paragraph 1. In their view that paragraph should be brought into line with the corresponding provision of the Vienna Convention on Diplomatic Relations of 1961. The notion of assumed consent in case of fire or other disaster that seriously endangers public safety was subject to the subjective evaluation of the host State and, therefore, it opened the way to abuses which might result in the very negation of the principle of inviolability of the premises of the mission. Similar reservations were expressed by those representatives with regard to article 54 and article N of the annex concerning the inviolability of the premises of the delegation and of the observer delegation.

75. Considering that it was necessary to provide specifically for cases where public safety was threatened, other representatives supported the inclusion of a sentence that, like the last sentence of article 23, paragraph 1, was modelled on the corresponding provision of the Convention on Special Missions. The comment was also made that the wording of that sentence was perhaps too restrictive of the presumption of consent; it was suggested to broaden it by including the criterion that "a reasonable effort had been made to obtain the consent of the head of mission".

76. The need to implement strictly the "special duty" of the host State to protect the premises of the mission, provided for in article 23, paragraph 2, was underlined by certain

presentatives. In this connexion, it was said that the "special duty" should be regarded as evidence of customary law and that the obligation to make reparation where it had been breached should be recognized.

Article 24 (Exemption of the premises from taxation)

77. It was suggested that the words "and other property" be inserted after the words "The premises" in article 24, paragraph 1.

Article 26 (Freedom of movement)

78. Recalling that the freedom of movement had been abused in the past, it was stated that article 26 should provide, as article 57 did for delegations, that the host State ensured to all members of the mission such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the mission. In this connexion, the observation was made that the freedom of movement granted to members of missions was already subject to the laws and regulations of the host State relating to zones prohibited for reasons of national security.

Article 28 (Personal inviolability)

79. It was suggested that a second paragraph be added to article 28 reading:

> "This principle does not exclude either measures of self-defence, or in exceptional circumstances, measures to prevent the head of mission and members of the diplomatic staff of the mission from committing a serious crime or offence."

(See also comments on article 36 in paragraph 83 below.)

Article 30 (Immunity from jurisdiction)

80. Some representatives noted with satisfaction the inclusion in article 30, paragraph 1 (*d*), as an exception to the principle of immunity from civil and administrative jurisdiction, the case of an action for damages arising out of an accident caused by a vehicle used by the person in question outside the exercise of the functions of the mission where those damages are not recoverable from insurance. It was said that that subparagraph, as the corresponding provision of article 61 relating to the immunity from jurisdiction of members of delegations, would fill a gap in existing practice and would help to eliminate the risk of friction between the host State and the sending State. Certain representatives indicated that they would be prepared to accept a stronger provision on the matter requiring members of missions to insure their vehicles against third party liability. Other representatives criticized paragraph 1 (*d*) because in their view it would establish an unacceptable analogy between permanent and special missions.

Article 31 (Waiver of immunity)

81. Certain representatives considered that article 31, paragraph 5, as the corresponding provision of article 62 concerning delegations, was a regression from article 34 of the provisional draft, [71] which made it obligatory for the sending State to waive immunity for its nationals in appropriate instances, as was the case in section 14 of the Convention on the Privileges and Immunities of the United Nations. It was also said by others that the importance of paragraph 5 should not be underestimated, since it imposed on the sending State the duty to "use its best endeavours to bring about a just settlement" where immunity from jurisdiction was not waived. Reference was also made to the requirement that the waiver must always be expressed (paragraph 2) and to the necessity for separate waiver in respect of the execution of the judgement (paragraph 4).

[71] See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 10.

Article 33 (Exemption from dues and taxes)

82. With regard to this article, as well as the corresponding article 64 on delegations, it was said that the added value tax was an indirect tax incorporated in the price of goods offered on the market, the nature of which was not affected by the fact that it could be separated from the prices of goods.

Article 36 (Privileges and immunities of other persons)

83. Reservations were expressed concerning the extension of the privileges and immunities accorded in article 36, paragraphs 1 and 2, to members of the family of the head of mission and members of the family of a member of the diplomatic staff of the mission as well as to members of the administrative and technical staff of missions and members of their families. Thus, for instance, it was said that article 36, paragraph 1, extended the personal inviolability of the head of mission and the members of the diplomatic staff of the mission, as provided for in article 28, to members of their respective families with the result that the host State would be required to assume the same obligations in regard to the personal inviolability of the head of a mission and the personal inviolability of a member of the family of a member of the diplomatic staff of a mission. In this connexion, it was also said that in some cases the functional criterion would be difficult to apply, particularly to the families of members of a mission.

Part III. Delegations to organs and to conferences

Article 43 (Appointment of the members of the delegation)

84. (See comments on article 9 in paragraph 66 above.)

Article 46 (Size of the delegation)

85. The observation was made that article 46 would not be used by the host State so as to impede those taking part in the work of conferences and organs of organizations or the activities of the conferences and organs themselves.

Article 48 (Acting head of the delegation)

86. (See comments on article 16 in paragraph 69 above.)

Article 50 (Status of the Head of State and persons of high rank)

87. The suggestion was made that in article 50, paragraph 1, the word "general" should be inserted before "international law". With regard to paragraph 2 of the article it was said that the expression "persons of high rank" was ambiguous and that international law did not accord any especial status to such persons in international relations.

Article 51 (General facilities)

88. Article 51, like the corresponding provision for a permanent mission in article 20, paragraph 1 (*a*), referred to "all facilities", whereas the parallel article (article H) of the annex referred to "the facilities required". In this connexion, it was pointed out that such a substantive distinction was unjustified and that "all facilities" should also be accorded to an "observer delegation".

Article 53 (Assistance in respect of privileges and immunities)

89. The view was expressed that in conformity with present-day practice it was not for the organization or conference but rather for the host State to assist the sending State, its delegation and the members of the delegation in securing the enjoyment of such privileges and immunities as were necessary for the discharge of their functions.

Article 54 (Inviolability of the premises)

90. It was said that the inviolability of the premises of the delegation should not apply to hotel rooms. (See also comments on article 23 in paragraph 74 to 76 above.)

Article 57 (Freedom of movement)

91. It was suggested to delete the words "as is necessary for the performance of the tasks of the delegation" because they might be interpreted in an unduly restrictive manner. (See also comment on article 26 in paragraph 78 above.)

Article 61 (Immunity from jurisdiction)

92. Certain representatives regretted that, despite the criticisms that had been voiced with regard to the scope of the proposed privileges and immunities, the Commission had retained in article 61 alternative A of article 100 of the provisional draft, [72] namely the version which was the most far-reaching in scope. In their view the matter should be approached from a strictly functional standpoint, along the lines of the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies. Other representatives approved the text proposed by the Commission for article 61 as well as the explanations given on the subject in paragraph (4) of the commentary on the article. (See also comments on article 30 in paragraph 80 above.)

Article 62 (Waiver of immunity)

93. (See comments on article 31 in paragraph 81 above.)

Article 64 (Exemption from dues and taxes)

94. Reservations were expressed on the argument advanced in paragraph (2) of the commentary on article 64 in regard to exemption of the members of the delegations from sales taxes. (See also comments on article 33 in paragraph 82 above.)

Part IV. General provisions

Article 75 (Respect for the laws and regulations of the host State)

95. Stressing the importance of article 75, some representatives underlined that careful consideration should be given to it. Different views were expressed on the present formulation of the article. Some considered that the article established a proper balance between the interests involved, while others wondered whether its provisions went far enough to secure the protection of host State or to avoid conflicts between the sending and the host States.

96. The provisions of paragraph 1 according to which all persons enjoying privileges and immunities had the duty to respect the laws and regulations of the host State and not to interfere in the internal affairs of that State received general support.

97. With regard to paragraph 2, certain representatives were of the opinion that although it did provide that the sending State was under the obligation to recall a person enjoying immunity from jurisdiction, terminate his functions or secure his departure where the person concerned committed a "grave and manifest violation of the criminal law of the host State", the host State, if a dispute arose concerning the nature of the violation, had no recourse except the consultation and conciliation procedures laid down in articles 81 and 82. Because those procedures might be slow to ensure protection, it was said that it would be advisable

[72] *Ibid., Twenty-fifth Session, Supplement No. 10*, p. 24.

to add a provision allowing the host State to require the departure of a person guilty of abusing his privileges, subject to the necessary safeguards. That was the precedent of section 13 (*b*) of the Headquarters Agreement between the United Nations and the United States [73] and of section 25, paragraph 1, of the Convention on the Privileges and Immunities of the Specialized Agencies. [74] It was also noted that this Agreement and this Convention covered all cases of abuse of residence, while article 75, paragraph 2, was confined to "grave and manifest violation of the criminal law of the host State", failing therefore to carry over fully into its provisions the duty to respect all the laws and regulations of the host State provided for in paragraph 1. In connexion with those views, it was said that the fears of the host States might be dispelled if a provision was added making it an obligation on the part of the sending State not to abuse the rights, privileges and immunities granted to members of missions or delegations and if the procedure of settlement of disputes was strengthened.

98. It was also considered that the provisions of article 75, paragraph 2, might be interpreted in a way that would not only limit the scope of the draft articles but might also be a permanent source of conflict between States, particularly because the paragraph did not specify how it could be established that there had been a "grave and manifest violation of the criminal law of the host State" in cases where the sending State would not waive the immunity of the person concerned.

99. Other representatives stated that article 75, paragraph 2, wisely stipulated that the recall of the person concerned or the termination of his functions or his departure should be decided by the sending State itself and that, in case of a dispute, the consultation and conciliation procedures of articles 81 and 82 offered appropriate safeguards to secure the protection of the host State. It was recalled, in this connexion, that the declaration of *persona non grata* was a procedure alien to the relations between States and international organizations. In the opinion of some of those representatives article 75 went as far as possible in ensuring the protection of the host State. This protection could not be exceeded without jeopardizing the independence of the organizations and their members.

100. Doubts were also expressed with regard to the meaning of the last sentence of paragraph 2 of the article. Certain representatives considered that it introduced a far-reaching exception to the provisions of that paragraph. A grave and manifest violation of criminal law or interference in the internal affairs of the host State could not possibly fall within the "functions of the mission or the tasks of the delegation". Furthermore, the sentence introduced a subjective element that could cause difficulties, since an accused person would only have to show that the action in question had been taken on instructions from a sending State in order to escape the operation of the provisions of paragraph 2.

101. Lastly, it was observed that the application of article 75 might be complicated by the lack in the draft of a definition or enumeration of the functions of a delegation. Differences of opinion between the sending State and the host State concerning the operation of the provisions of article 75, particularly of paragraph 2, could be avoided by a clear definition of the function of the delegations.

Article 76 (Entry into the territory of the host State)

102. (See comments on article 9 in paragraph 66 above.)

Article 79 (Non-recognition of States or governments or absence of diplomatic or consular relations)

103. Some representatives considered that the provisions of this new article were all necessary and well drafted. The view was expressed that the article as a whole was a signifi-

[73] See General Assembly resolution 169 (II).
[74] See General Assembly resolution 179 (II).

cant contribution and reflected adequately existing law and practice. By providing that the rights and obligations of the host State and of the sending State should not be affected by non-recognition of the one by the other nor by the severance of diplomatic or consular relations between them, article 79 protected the independent position of the organization and safeguarded the interests of both the host and the sending State.

Article 80 (Non-discrimination)

104. Considering that it reflected the fundamental principle of sovereign equality of States, some representatives endorsed the rule of non-discrimination embodied in article 80. It was said that article 80 was an essential corollary to article 79. It was also emphasized that the provision of the article should be applicable to all the draft articles, including article 5, and that the article should specify the exact scope of application of its provision. Lastly, it was added that the unsatisfactory wording of the article might open the door to discriminatory measures indirectly through the means necessary for the implementation of the rule, as could be seen from paragraph (7) of the commentary.

Article 81 (Consultations between the sending State, the host State and the organization) and article 82 (Conciliation)

105. Certain representatives approved the procedures established in articles 81 and 82 because in their view they provided for a flexible system adapted to the needs of international organizations. If a dispute proved to be incapable of settlement by the consultation procedure of article 81, it might be brought before a conciliation commission established in accordance with article 82. In exceptionally difficult cases, the conciliation commission could request, in accordance with article 82, paragraph 5, an advisory opinion from the International Court of Justice regarding the interpretation and application of the proposed convention. Without giving an absolute guarantee of solving disputes, those procedures would considerably increase the possibility of reaching an acceptable result for all the parties concerned.

106. Other representatives likewise supported the procedures laid down in the draft for the settlement of disputes and welcomed, as an improvement, the addition of article 82 on conciliation. Considering, however, that the whole system could be strengthened, they regretted that the draft did not provide for a mandatory procedure for the settlement of disputes by the International Court of Justice, on the pattern of section 30 of the Convention on the Privileges and Immunities of the United Nations.

107. Some representatives felt that the *bona fide* application of the provisions of the proposed convention would ensure the elimination of most of the differences that might arise in the application and interpretation of its provisions. They accepted article 81 as in line with existing practice but considered that the conciliation procedure provided for in article 82 was cumbersome and complex and of a doubtful practical value. It was also said that it would have been sufficient to refer to the means of settlement of disputes provided for in Article 33 of the Charter of the United Nations.

108. Certain representatives underlined the need to examine very closely the procedures embodied in articles 81 and 82 before trying to express a definitive opinion thereon. Thus, it would be necessary to study further—in connexion with article 82—questions such as the scope of paragraph 1, which referred to all procedures applicable to the settlement of disputes established in the organization, the powers vested in the organization, in the chief administrative officer of the organization and in the conciliation commission itself, and the option of the conciliation commission to request an advisory opinion from the International Court of Justice. Reservations were also expressed regarding the usefulness and effectiveness of the system of consultations provided for in article 81, in the light *inter alia* of the discourag-

ing results obtained from that type of consultations, within the framework of the Informal Joint Committee on Host Country Relations.

109. It was also observed that greater attention should be given to the fact that the disputes dealt with were disputes between States and that, therefore, the role of the organization, under those articles, should be defined more precisely, particularly regarding the proposed conciliation procedure of article 82, in order to avoid that an organization could be both judge and party in a dispute.

110. Finally, the following additional comments were made on the provisions of article 82: firstly, it was noted that the time-limit set in paragraph 1 might create confusion, since the rules of the organization might indicate a different period; secondly, it was pointed out that the term "chief administrative officer" used in paragraph 3 might not have an equivalence in all organizations and that, therefore, it might be wise to seek a more appropriate term; and, thirdly, it was mentioned that the provision in paragraph 5 allowing the conciliation commission, if so authorized, to request an advisory opinion from the International Court of Justice would give the Court a more active role in international relations, by expanding the list of bodies with the right to request such opinions, referred to in Article 96 of the Charter.

3. FINAL PHASE OF CODIFICATION OF THE TOPIC

111. In paragraph 57 of its report, the Commission recorded the decision it took, in conformity with article 23, paragraph 1 (*d*) of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles and to conclude a convention on the subject.

Form to be given to the codification of the topic

112. As regards the form, most representatives supported the Commission's recommendation: they considered that the draft articles constituted an excellent basis for the conclusion and adoption of a convention rather than an expository code. This was so especially in so far as they laid down a régime which would not prejudice existing international agreements or preclude the further development of law on the subject. Besides, a convention had been the form chosen for all the other instruments prepared by the Commission in the field of diplomatic law and it would open an opportunity to all new States to participate directly in the formulation of its text. Some representatives, however, indicated their preference for an expository code. It was said in this respect that articles 3 and 4 made the draft convention fairly similar to such a code.

(b) *Participation in the elaboration of a future convention on the topic*

113. Some representatives considered that all States should be able to participate in the elaboration of the future convention. In particular, it was said that all principal host States should be full participants in the final phase of codification of the topic. Also, some representatives shared the hope expressed in paragraph 58 of the Commission's report regarding the association of the United Nations itself, the specialized agencies and the International Atomic Energy Agency in the final phase. Certain questions arose regarding the assumption of obligations by international organizations to which the new convention would apply. It seemed clear that an organization would be directly charged with certain rights and obligations under the convention. Accordingly, it would be advantageous if the organization in respect of which States proposed to apply the convention could participate in the preparatory work. This question should be dealt with in the light of past experience and the United Nations Conference on the Law of the Sea of 1958 might provide a suitable

precedent. However, as had been observed by the International Bank for Reconstruction and Development (see A/8410/Add.1 and Add.1/Corr.1, paragraph 4 of its observations), it might not be feasible to devise a mechanism allowing the organizations to vote. In this connexion, it was said that a conference would be in a better position to settle the question of the participation of subjects of international law other than States. The question was also raised whether the conference of plenipotentiaries envisaged in the Commission's report would be the kind of international gathering which would best serve the purpose. International organizations, which as entities were distinguished from their membership, should be given a recognized status at a conference where an important aspect of their affairs was to be dealt with.

(c) *Body to be entrusted with the task of elaborating a future convention on the topic*

114. As regards the procedure to be followed in the final phase of codification of the topic, aimed at concluding a convention, different views were expressed. A number of representatives considered that the draft articles should be submitted to the Sixth Committee, which would be entrusted with the task of preparing a final draft convention to be adopted by the General Assembly. A number of reasons were given in support of this position. It was said that the Sixth Committee, which was composed of experts representing all States Members of the United Nations, had the experience to carry out the task required, as it had been already successfully proved in connexion with the Convention on Special Missions. There was a strong possibility that an international conference might not be any more representative than the Sixth Committee, especially if, as was feared, some States insisted on the Vienna formula being applied. An international conference would involve additional expenditure for the United Nations, which would constitute an undue burden on the budget of the Organization at a time of an extremely difficult financial situation and would entail considerable expenses for participating Governments. There was already too great a number of diplomatic conferences scheduled for 1972 and 1973 and an additional conference would therefore place a heavy burden on representatives of small States and developing nations, particularly for those attending regularly the Sixth Committee and other legal special committees or bodies or being members of the Commission. If the study and adoption of the proposed convention were entrusted to the Sixth Committee, the prestige and role of that organ would be enhanced. Besides, its future work programme was not particularly heavy and it could perform its task without adverse consequences to the other items on the agenda. Finally, the draft articles could be considered in the Sixth Committee at the greatest possible length whereas international conferences were limited by time. It was also pointed out that when the Sixth Committee had had to adopt the Convention on Special Missions in 1968 and 1969, it had been overburdened with a heavy agenda and doubts had been raised as to the advisability of having the Committee adopt the Convention. Furthermore, since Governments were encouraged to send legal experts to the General Assembly, they could usefully comment on draft conventions dealing with legal matters; it was to be hoped that in future years it would be possible for the Sixth Committee to deal with draft articles if its agenda was not too full.

115. On the other hand, several representatives supported the Commission's recommendation to convene an international conference of plenipotentiaries. In this respect it was said that the draft articles could be studied in all their political, administrative and technical aspects only at a diplomatic conference. A conference would provide the coherence and uniformity indispensable to a constructive study of so complex a draft, and would be in a better position than the General Assembly to study the draft articles in detail and without interruption. The interruption caused by the involvement of the Sixth Committee in the adoption of the Convention on Special Missions in 1968 and 1969 seemed in fact to have been

prejudicial. The task of codifying law required concentrated attention, and the Sixth Committee had to deal with a variety of issues. One obvious advantage of a conference was that it would allow countries that were not Members of the United Nations to participate. Some of those countries were host States to a great number of international organizations and their participation would help ensure the viability of the future convention. Also, it would certainly be inconvenient for countries with small delegations if the convention were to be drawn up in the Sixth Committee. The recent experience when the Sixth Committee had prepared the Convention on Special Missions had overburdened many delegations. The cost of a conference, if higher, would be justified by keeping it to a minimum and if the outcome was to be a convention obtaining signatures and ratifications by the largest possible number of Governments. Unlike the question of special missions, the representation of States to international organizations was not governed by customary international law. A certain practice had developed in that respect, but the harmonization of that practice would require careful consideration. As to the place where the conference might meet, some representatives favoured the United Nations Headquarters or even a neighbouring city, in order to reduce expenses to the minimum. On his part, the representative of Austria stated that his Government would be prepared to act as host to such a conference on the same conditions as had applied to the Vienna Conferences on Diplomatic Intercourse and Immunities, Consular Relations, and the Law of Treaties.

116. Some representatives, while appreciating the reasons advanced in favour of entrusting the Sixth Committee with the task, indicated that they would be prepared to agree to convening an international conference. A number of representatives indicated that they had not made up their minds definitely on the subject and would revert to it after hearing the views and suggestions that might be put forward by other representatives. Some of those representatives expressed their readiness to support the position of the majority.

117. Irrespective of their position on the question of procedure, or not having pronounced themselves on it, a number of representatives were of the view that a final decision on the question, based on a proper balance of the considerations of necessity, convenience and economy, should best be left to the next session of the General Assembly. As had been done in the case of other final drafts of the Commission, the draft articles should in the meantime be referred to Governments and international organizations for further comments.

(d) *Request for comments from Governments and international organizations*

118. Several representatives were of the opinion that Governments and international organizations should be given adequate time to comment on the draft articles and to consider the observations already made thereon so as to ensure that the future convention commanded the maximum acceptance. In the view of some representatives comments should be invited not only on the substance of the draft articles but also on the most appropriate procedure for the elaboration and adoption of the convention. Such a course had been followed with the Commission's draft articles on diplomatic intercourse and immunities in 1958 and 1959 and could be adopted with advantage in the present case.

(e) *Timing for the elaboration of a convention on the topic*

119. Some representatives considered that it would be preferable to take up the question of the representation of States in their relations with international organizations only after the Commission had completed its study of the topic of relations between States and international organizations by considering the representation of organizations to States and in particular the question of the privileges and immunities of the organizations themselves and of their officials. The question of granting privileges and immunities to permanent missions

and permanent observer missions within the meaning of article 1, as well as to delegations to organs and conferences, was intimately linked to the legal status of those organizations. The work of the Commission would thus form a whole and States would be able to state their views in full knowledge of all the facts; the two complementary questions could be dealt with in a single instrument.

120. On the other hand, it was considered that any such arguments could only be a pretext for perpetuating situations which were jeopardizing the independence of international organizations. The Commission currently had five topics under discussion, as set forth in chapters III and IV of its report. That would keep it occupied for several years, bearing in mind that the Commission met once a year for a short period of 10 weeks. The draft articles should therefore not be set aside until all the other aspects of the question of relations between States and international organizations had been studied.

121. Some representatives who spoke in favour of convening a conference considered that it should take place not before 1973, and preferably in 1974. It would be unrealistic to convene it at an earlier date in view of the fact that a major conference had already been scheduled for 1972 and of the preparations which were under way for a third conference on the law of the sea. Besides, in view of the importance of the subject, Governments and international organizations would need time to examine the draft in depth before proceeding to prepare and adopt a definitive text. The view was also expressed that if preparations for a proposed convention on the protection of diplomats (see paragraphs 145-152 below) had made satisfactory progress, an international conference might examine both drafts simultaneously in 1974.

(f) *Participation in the convention to be adopted on the topic*

122. Some representatives considered that the future convention should be open for signature to all States without discrimination. Also, in view of the fact that the convention would create rights and impose obligations for international organizations, some representatives deemed it advisable for those organizations to become associated through the instrument to States parties to the convention. As to the manner in which that association could be effected, it was stated that article X of the Convention on the Privileges and Immunities of the Specialized Agencies of 1947, which had stood the test of time and operation, might serve as a useful model.

C. Succession of States

1. Observations on the topic as a whole

123. Several representatives referred to the importance attached by their respective Governments to the codification and progressive development of the rules of international law relating to succession of States. The hope was expressed that at its next session the Commission would be able to make further progress towards the completion of the work on the topic.

124. Some representatives stressed the need, in the codification of the different aspects of State succession, for due consideration to be given to the practice of States which had attained independence as a result of the struggle against colonialism. The political and economic independence of the new States should be duly protected. The codification of the topic should therefore be undertaken in the light of the new progressive principles of international law, particularly of the principles of self-determination, sovereign equality, equal rights and permanent sovereignty over natural resources, and there should be no question of any automatic transmission to the new States of obligations contracted by the former administering Powers.

125. Other representatives considered that many issues in the law of State succession were uncertain. State practices and decisions of international courts did not give complete guidance on the matter. In this connexion, it was said that any right established in relation to a third State by the former sovereign should be recognized as valid by the new State, unless it was contrary to international law.

2. OBSERVATIONS ON SUCCESSION IN RESPECT OF TREATIES

126. It was noted with satisfaction that the Commission intended to complete at its next session the first reading of all the draft articles on succession of States in respect of treaties on the basis of a comprehensive report to be submitted by Sir Humphrey Waldock, Special Rapporteur, consolidating the texts of draft articles contained in his first four reports and covering all the main elements of this aspect of State succession.

127. No objection was raised to the conclusion of the Commission that succession in respect of treaties should be dealt with as a particular topic within the framework of the law of treaties. However, certain representatives reiterated that this aspect of State succession should be studied in conjunction with succession in respect of matters other than treaties, so as to facilitate the formulation of general rules on succession based on the practice of States which had recently attained independence as a result of the decolonization process. It was also said that careful consideration should be given to the co-ordination of the scope, language and provisions of the future draft articles on succession in respect of treaties with those of the Vienna Convention on the Law of Treaties of 1969.

128. With regard to the question of the origins and types of succession, it was pointed out that cases of succession resulting from the separation of part of the metropolitan territory of an existing State and cases of succession resulting from the emergence of a former dependent territory to independence should be dealt with separately, because the situations derived from those two kinds of cases were not identical. Certain representatives expressly endorsed the Special Rapporteur's approach that for the purpose of studying the subject it was essential first to identify the principles applicable to "new States" in their purest form before considering the possible effects of special factors in particular cases of succession.

129. The need to take into consideration the different types of treaties, particularly the distinction between multilateral treaties and bilateral treaties, was also referred to during the discussion. Thus, it was said that multilateral treaties constituted, generally speaking, a homogeneous category susceptible of a certain uniform treatment. Bilateral treaties, on the other hand, regulated a variety of situations and were concluded by the parties for attaining different purposes.

130. Tentative observations were also advanced on the provisions of some of the draft articles contained in the first four reports submitted by the Special Rapporteur. Pending a full examination of the subject, certain representatives accepted the definitions of terms in draft article 1,[75] particularly the definition of the term "succession" in sub-paragraph (*a*) of that article. It was felt that the provision proposed in draft article 2 (Areas of territory passing from one State to another) [75] might rise difficulties in regard to problems of sovereignty and territorial integrity and that its inclusion in the context of the introductory articles should be reconsidered. Reference was made with approval to the underlying principles embodied in draft articles 3 (Agreements for the devolution of treaty obligations of rights upon a succession) [75] and 4 (Unilateral declaration by a successor State).[75] It was noted that devolution agreements should be considered *res inter alios acta* for the purpose of relations between the successor State and third States. In respect of the unilateral declarations

[75] See *Yearbook of the International Law Commission 1969*, vol. II (United Nations publication, Sales No.: E.70.V.8) document A/CN.4/214 and Add.1 and 2, p. 45.

of succession made by new States, it was observed that the declarations provided a legal basis for the continuity of treaty relations between the new State and a third State party but the legal effect of such declarations with regard to the maintenance in force of a given treaty would also depend on the express or tacit acceptance by the third State of the provisional or permanent application of the treaty. The two elements of declaration and acceptance, taken together, were a convenient method of maintaining the treaty relationships.

131. Support was expressed for the provision proposed in draft article 6 (General rule regarding a new State's obligations in respect of its predecessor's treaties).[76] In this connexion, it was reiterated that a successor State could not be held or be obliged to become a party to a treaty concluded by the predecessor State by reason only of the fact that such a treaty was in force in respect of the territory of the successor State at the date of the succession. Different views were expressed concerning "dispositive", "territorial" or "localized" treaties as a possible exception to that general rule. On one hand, it was stated that "dispositive", "territorial" or "localized" treaties were binding on the successor State and that, therefore, the general rule of draft article 6 should be supplemented with appropriate exceptions concerning that category of treaties. On the other hand, it was said that "dispositive", "territorial" or "localized" treaties should fall likewise under the general rule of draft article 6 and that any idea of automatic succession to those treaties should be rejected. With regard to boundary treaties, the view was expressed that the Commission should avoid giving legal endorsement to situations created by old treaties relating to colonial boundaries, which had been drawn with the strategic and economic interests of the former administering Powers in mind, since that would be contrary to General Assembly resolutions 1514 (XV), 1654 (XVI) and 2621 (XXV). In such cases, succession should not take place without the freely expressed consent of all the parties and peoples concerned. The notion of the permanent validity of those boundary treaties ran counter to the fundamental principle of self-determination and the doctrine of revindication, under which a country could reclaim something which it had once held as a right.

132. Reference was made with approval to the principle embodied in draft article 7 (Right of a new State to notify its succession in respect of multilateral treaties).[76] The right provided for in the article, it was said, had been tacitly accepted by the parties to multilateral treaties and the new States themselves had so far proceeded on the assumption that they possessed that right. Recalling that the basis for such a right was the existence of a legal nexus formerly established by the predecessor State between the treaty and the territory of the successor State, the view was expressed that the successor State had the right to notify its succession to "all" treaties applicable to its territory at the date of the succession and that, therefore, the exceptions provided in draft article 7 did not seem justified.

133. On the subject-matter of draft article 9 (Succession in respect of reservations to multilateral treaties),[76] it was said that where a State had given notice to the depositary of its succession to a treaty and at the same time notified reservations of its own, without alluding to those formulated by its predecessor, the predecessor State's reservations no longer applied to the successor State.

134. Lastly, on draft article 13 (Consent to consider a bilateral treaty as continuing in force)[77] certain representatives agreed that the continuance in force of bilateral agreements was a matter of express or implied consent between the new State and the other State party. This view, however, was not shared by all the representatives who referred to the matter. Draft article 13 was criticized on the grounds that it did not take duly into account the legal nexus established prior to the date of succession between the treaty and the territory of the

[76] See A/CN.4/224.

[77] See A/CN.4/249.

successor State. According to this view the right of a new State to notify its succession, provided for multilateral treaties in draft article 7, existed likewise in respect of bilateral treaties (see comments in paragraph 132 above).

3. OBSERVATIONS ON SUCCESSION IN RESPECT OF MATTERS OTHER THAN TREATIES

135. The need for making progress in the consideration of this important aspect of State succession was also underlined during the debate. In this connexion, it was said that the codification of the rules relating to succession in respect of matters other than treaties should be based on equitable principles and disregard practices detrimental to new States formerly under colonial rule.

136. Some representatives considered that the treatment of the subject by Mr. Bedjaoui, Special Rapporteur, [78] would seem generally satisfactory and commended him for his endeavours to formulate appropriate rules, particularly with regard to the question of defining and determining public property and what is transmissible public property. Recalling the principle *nemo plus juris transferre potest quam ipse habet*, disagreement was expressed, however, with the attempt made by the Special Rapporteur to divide State property into the private domain and the public domain.

D. STATE RESPONSIBILITY

137. The need to proceed more rapidly to the codification and progressive development of the rules relating to State responsibility was reiterated by some representatives. The third report submitted by Mr. Ago, Special Rapporteur, [79] was considered a valuable contribution conducive to facilitating the work of the Commission on the topic and speeding up the preparation of draft articles on the subject.

138. Certain representatives stressed the particular importance of a codification of the rules governing State responsibility and its significance for the maintenance of international peace and security. Those representatives considered that special attention should be given to State responsibility for the violations of the fundamental principles and rules of contemporary international law, such as crimes against peace, aggression, colonialism, the suppression of national liberation movements, crimes against humanity, genocide and *apartheid*. It was added that the codification of the rules relating to State responsibility would contribute to the strengthening of international law, world peace and security to the extent that it would comply with the need to promote the rights of peoples to live in peace, without foreign interference, and to eliminate the use or threat of force and all forms of pressure and coercion in international relations.

E. THE MOST-FAVOURED-NATION CLAUSE

139. Certain representatives stated that their Governments were particularly interested in the study of the most-favoured-nation clause undertaken by the Commission. They recalled that the subject was of special importance for the developing countries and would help the promotion of international economic relations.

140. The suggestion was made that although the General Assembly had requested the Commission to undertake the study of the clause, if further consideration of the topic revealed that it was more relevant to the terms of reference of the United Nations Commission on International Trade Law, the International Law Commission should inform the General

[78] See A/CN.4/247 and Add.1.

[79] A/CN.4/246 and Add.1-3.

Assembly accordingly. The representative who made the suggestion indicated that it was based on the characteristics of the clause and other relevant factors. In the first place, the clause was peculiar to commercial treaties; secondly, its main purpose was to achieve equal trading opportunities and a self-propelling extension of freedom of investment and favourable tariff arrangements. There was yet a third factor, that of the close connexion between the most-favoured-nation clause and some of the important provisions and the practical application of the General Agreement on Tariffs and Trade. Furthermore, the functions of the United Nations Commission on International Trade Law, in the general area of the harmonization and unification of the law of international trade included those of preparing or promoting the adoption of new international conventions and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices. In reply to that suggestion, it was emphasized that the question of the most-favoured-nation clause relates particularly to public international law and it was recalled that the International Law Commission had already begun important work on the matter. It would be regrettable to refer the question to the United Nations Commission on International Trade Law, whose programme of work was already very heavy.

F. The question of treaties concluded between States and international organizations or between two or more international organizations

141. Several representatives welcomed the appointment of Mr. Reuter as Special Rapporteur for the topic. They also endorsed, generally speaking, the conclusions set forth in the report of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations adopted by the International Law Commission. Among those conclusions the following were specifically mentioned: that the study of the topic should be confined to treaties in written form; that the Vienna Convention on the Law of Treaties provided a firm basis for research; that nothing should be done which could directly or indirectly weaken the effect of the provisions laid down in the Vienna Convention; and that the Special Rapporteur should look for the relevant questions of principle governing the topic which the Vienna Convention did not have to take into account. It was also observed that it would not be easy to transplant the provisions of the Vienna Convention to treaties concluded between States and international organizations or between two or more international organizations, academic opinions to the contrary notwithstanding.

G. Other decisions and conclusions of the Commission

1. Progressive development and codification of the rules of international law relating to international watercourses

142. Certain representatives emphasized the particular importance of the topic for their respective countries and the international community as a whole and welcomed the decision of the Commission to include a question entitled "Non-navigational uses of international watercourses" in its general programme of work, as recommended by the General Assembly in resolution 2669 (XXV). Some of these representatives considered that the Commission should give priority treatment to the study of that question. It was also said that the topic called for the formulation of rules of a general nature which would ensure equitable utilization of the resources of international rivers and thus help to remove a source of friction between States.

143. Reservations regarding the codification of the topic at this stage were reiterated, however, by certain representatives. They felt that the inherent suitability of the topic for

a world-wide codification through the process of the Commission had not yet been demonstrated. It was added that the problems arising from the utilization of international watercourses should be settled through treaties concluded between the riparian States themselves.

144. Operative paragraph 5 of section I of the draft resolution adopted by the Sixth Committee (see text in paragraph 168 below) embodied the consensus reached upon the question of the priority to be given by the Commission to the study of the non-navigational uses of international watercourses.

2. THE QUESTION OF THE PROTECTION AND INVIOLABILITY OF DIPLOMATIC AGENTS AND OTHER PERSONS ENTITLED TO SPECIAL PROTECTION UNDER INTERNATIONAL LAW

145. In section D of chapter V of its report, concerning the problem of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, the Commission recorded its decision that, if the General Assembly requested it to do so, it would prepare at its 1972 session a set of draft articles on that important subject with the view to submitting such articles to the General Assembly at its twenty-seventh session.

146. A number of representatives referred to the question thus raised and one of them submitted a working paper containing the text of a draft convention on the subject (A/C.6/L.822) for transmission to the Commission.

147. Some representatives recognized the importance and urgency of the problem. Diplomatic agents and other persons entitled to special protection under international law are increasingly becoming the victims of such crimes as murder, kidnapping and assaults. While in some instances these might be common law attacks they were, in the main, politically inspired; in fact, such new forms of a personal violence had recently emerged as a tool of subversion. The numerous kidnappings of diplomatic agents which had been committed in recent years had been used for the purpose of blackmail or in order to put pressure on the receiving State or on certain groups within that State. As had been pointed out in a letter addressed to the President of the Security Council by the Permanent Representative of the Netherlands to the United Nations, reproduced in the report of the Commission on the work of its twenty-second session, [80] attacks on diplomats could lead to situations which might give rise to a dispute and as such could even endanger the maintenance of international peace and security. There existed international norms conferring a specially protected status on certain individuals, in particular article 29 of the Vienna Convention on Diplomatic Relations and article 40 of the Vienna Convention on Consular Relations, and the relevant provisions of the agreements relating to the privileges and immunities of international organizations. However, some representatives considered that from the viewpoint of the interpretation of those texts, the host State's duty to provide special protection did not constitute an unrestricted obligation; the most widespread theory of diplomatic law in fact acknowledged the existence of certain limitations in that regard, deriving particularly from the principle of the separation of powers. No legal system could agree to yield, in virtue of the obligation of special protection, to all the demands that kidnappers might make in exchange for their hostages. This position was shared by important mouthpieces of world public opinion. The only solution to be adopted in the case of political kidnapping was a concerted refusal by all Governments to yield to blackmail. Consideration of the problem should not be further postponed; the Sixth Committee should adopt a resolution requesting the General Assembly to take action.

[80] See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 10*, para. 11, annex.

148. As regards the manner in which the problem should be dealt with, a number of representatives welcomed and supported the Commission's proposal referred to in paragraph 145 above. The topic should be dealt with by the Commission as an *ad hoc* topic and should be given priority treatment. Indeed, it was unfortunate that the Commission had not undertaken such a task at its twenty-third session. The draft articles might constitute the basis for a convention, to be adopted under the auspices of the United Nations. One such instrument had already been adopted by the Organization of American States on 2 February 1971. It was also recalled that as a result of the adoption of General Assembly resolution 2645 (XXV) condemning aerial hijacking or interference with civil air travel, the Diplomatic Conference convened at The Hague in December 1970 had adopted the Convention for the Suppression of Unlawful Seizure of Aircraft which would constitute an effective instrument for international co-operation in the prevention and suppression of such unlawful acts.

149. Some representatives who favoured the Commission's recommendation nevertheless pointed out that the elaboration of a draft convention would not be without difficulties as various complex questions were involved. In considering the desirability and the possible contents of a further international instrument on the subject, it should be decided whether it was justifiable to single out diplomats for special protection, and if so how to define the class to be protected and the crimes against which protection was to be given. Consideration would have to be paid to the relationship between any proposals on the subject and the general law of extradition, including the question of discretion to refuse extradition for political offences. Principles such as non-interference and institutions such as the right of asylum must be respected. In the view of some representatives it was debatable whether an instrument of the kind envisaged would act as a significant deterrent against the practice it was designed to combat. Member States should have an opportunity to submit written observations on the issues involved before the Commission embarked on the preparation of draft articles.

150. Some representatives, while doubtful of the need for or possibility of draft articles on the subject, nevertheless considered that the Commission should study the problem. It was true that the protection of diplomatic agents and government officials was already provided for in international law, but recent events seemed likely to erode the relevant rules; there was an unfortunate lack of measures for strengthening the existing conventions and of penalties for offences against the persons in question. The measures could take the form of international co-operation to suppress such violations. It was doubtful whether it would be possible to prepare draft articles which would have any real practical value, but an unequivocal declaration by the international community expressing its firm determination to punish offenders would have value as a deterrent.

151. Regret was also expressed that the Commission could not tackle the problem within the context of its work on State responsibility, since in view of the highly political issues involved the preparation of a convention on the subject might fail to produce any practical results, for States would probably be reluctant to ratify it. In any event Governments should be given time to reflect on the need for yet another set of draft articles.

152. Some representatives opposed the idea of preparing draft articles on the matter. The protection of diplomatic and consular officers was adequately defined by existing international law; basic legal instruments, already in existence, were adequate to deal with the problem; what was needed was not a further international instrument but the effective implementation of existing penal law. The proliferation of legal texts, far from resolving such a delicate problem, might have the opposite effect by depriving Governments of the necessary freedom of action. The several international conventions concerned with the inviolability of diplomatic agents placed the responsibility on the host State for protecting diplomatic agents accredited to it. A new convention providing merely for repressive

measures was no reply to the economic, social and political causes underlying the kind of violence it was proposed to eliminate. The proposed new convention would in the long run have a harmful effect, since its repressive nature would stimulate rather than suppress violence, and at the same time it would be ineffective, since States would have difficulty in accepting it. Some States were reluctant to interfere with the right of asylum, which they considered justified, and others were anxious that their domestic jurisdiction should not be whittled away. A new convention would likewise be altogether incapable of staying the tide of revolutionary violence which was causing havoc to the Establishment in many countries, unless a peace force was set up. At best, the new convention could only serve as an instrument of political propaganda or a pretext for increasing repression, without in any way solving the problem. As regards the question of priorities, the opinion was expressed that the priority examination of the question of protection of diplomats would be tantamount to postponing still further the questions of State succession and State responsibility.

3. REVIEW OF THE COMMISSION'S LONG-TERM PROGRAMME OF WORK

153. A number of representatives noted with satisfaction the intention of the Commission to undertake, in its new composition, a review of its long-term programme of work, as well as its decision to place on the provisional agenda of its next session an item entitled "Review of the Commission's long-term programme of work: 'Survey of International Law' prepared by the Secretary-General" (see section I, paragraph 3, of the operative part of the draft resolution adopted by the Sixth Committee in paragraph 168 below).

154. Some representatives recalled that the work of the Commission and of special or *ad hoc* committees established by the General Assembly to deal with particular topics, for instance the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, had already produced important results. They emphasized that it was essential to speed up the process of codification and progressive development of international law in the light of the fundamental changes which have occurred in international relations during the last years and the impact of the scientific and technological revolution on their development. In the opinion of those representatives the Commission should take into account those changes and factors in determining the current needs of the international community when reviewing its long-term programme of work. The view was also expressed that the Commission should not be asked to codify questions of an essentially political nature and should concentrate its efforts on the legal aspects of the topics considered.

155. Many representatives congratulated the Codification Division of the Office of Legal Affairs of the United Nations Secretariat for the preparation of the remarkable working paper entitled "Survey of International Law". [81] The "Survey" was considered a most valuable and useful document for the Commission as well as for Governments, the Sixth Committee, other bodies engaged in the codification of international law, and professional and academic circles in general. Several representatives shared the view of the Commission that the "Survey" should be given as wide a circulation and distribution as possible by issuing it as a separate publication in addition to its inclusion in the *Yearbook of the International Law Commission.*

156. With regard to the sources used in the preparation of the "Survey", it was pointed out that the question arose as to what standing the resolutions and declarations of the United Nations organs, particularly the General Assembly, might have in a strictly legal sense. It was also said that it would be useful to specify whether treaties or conventions

[81] A/CN.4/245.

had already entered into force or not. Lastly, it was thought that the "Survey" did not take sufficient account of the distinction, regarded as important in legal theory, between non-recognition arising from the lack of diplomatic recognition and non-recognition resulting from the application of a sanction for an international offence.

157. It was generally agreed that the "Survey" provided an excellent basis for the review by the Commission of its long-term programme of work. The Commission should retain or add to its long-term programme the topics which deserved consideration and discard those which were no longer suitable for treatment. In this connexion, it was said that the Commission's task would be facilitated it, at the appropriate stage, Governments were invited to submit their observations on both the choice of subjects and the most suitable way of completing the codification of the different topics.

158. Attention was drawn during the debate to subjects or topics of international law such as rights and duties of States in the light of the purposes of the United Nations and of new developments in international law; legal rules relating to the peaceful means for settlement of international disputes within the framework of the Charter; questions concerning the law relating to economic development; recognition of States and Governments; jurisdictional immunities of foreign States and of their organs, agencies and property; exercise of jurisdiction by a State in matters having an extra-territorial element; unilateral acts; historical waters, including historic bays; the law of the sea-bed; the law relating to international organizations; and the law relating to armed conflicts.

159. Finally, the hope was expressed that in reviewing its long-term programme, the Commission should also consider the question of the order of priority for the study of the topics selected as well as ways and means of expediting its work in the many fields still to be codified and developed.

4. ORGANIZATION OF FUTURE WORK

160. The organization of work planned by the Commission for its next session was generally approved. The representatives who spoke on the matter supported the view that the Commission should continue its work on State succession with a view to completing in 1972 the first reading of draft articles on succession of States in respect of treaties and making progress in the consideration of succession of States in respect of matters other than treaties. It was agreed that the Commission should likewise continue its work on State responsibility in order to make substantial progress in the preparation of draft articles on the topic. In addition, it was considered that the Commission should continue its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations and the most-favoured-nation clause. For reasons recorded in paragraph 140 above, reservations were however expressed by certain representatives regarding the study of the most-favoured-nation clause by the Commission. The recommendations of the Sixth Committee concerning the organization of work planned for the next session of the Commission were embodied in section I, paragraph 4, of the operative part of the draft resolution adopted by the Sixth Committee (see paragraph 168 below).

5. CO-OPERATION WITH OTHER BODIES

161. Several representatives welcomed the Commission's continuing co-operation with regional bodies with responsibilities in the legal field such as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, the latter of which had, following the entry into force of the Protocol of Amendment to the Charter of the Organization of American States, done at Buenos Aires in 1967, become one of the main organs of that organization. Gratification was

expressed at the presence of observers from those bodies at the twenty-third session of the Commission. It was also said that the occasional participation by members of the Commission in important meetings of those bodies should be encouraged, since in the field of codification it augured well for the harmonization of regional approaches to specific areas of international law. The close co-operation established between the Commission and those regional legal bodies was all the more useful in that it enabled the interests of members of the international community to be served in the most economical way.

6. GILBERTO AMADO MEMORIAL LECTURE

162. Several representatives expressed satisfaction at the Commission's decision concerning the establishment of a memorial lecture honouring the late Gilberto Amado, the illustrious Brazilian jurist, a former member of the Commission. In so doing, the Commission had found a very dignified way to keep his memory alive.

163. Some representatives commended also the Brazilian Government for its contribution to the organization of the Memorial Lecture. In this connexion, the hope was expressed that substantial sums would be added to the initial sum establishing a trust fund for the purpose of the Memorial Lecture, and that the members of the advisory committee set up by the Commission would organize the annual lecture in keeping with the high purpose it was intended to serve.

7. SEMINAR ON INTERNATIONAL LAW

164. Several representatives expressed gratification at the success of the seventh session of the Seminar on International Law. Thanks were given to the specialists who had participated as lecturers in the Seminar and to those Governments whose financial support had made possible the attendance of many participants from developing countries, some of which were acting as representatives on the Sixth Committee at the present session of the General Assembly. Also, it was noted with satisfaction that Spanish had been adopted as a working language at that session.

165. Support was expressed for the continuation of the Seminar, which was an established feature of the United Nations Office at Geneva and which had proved to be of importance to the developing countries. It was hoped that Governments would continue to donate generously so that developing countries could be effectively represented by an expanded number of their nationals. In this connexion, it was noted with gratification that the Geneva Office had been able to establish a trust fund out of the voluntary contributions made to the Seminar fellowships. Five representatives announced that their Governments would again make financial contributions to enable nationals of developing countries to attend the forthcoming session of the Seminar.

IV. VOTING

166. At its 1280th meeting held on 12 November 1971, the Sixth Committee proceeded to vote on draft resolution A/C.6/L.826 and the revised oral amendment to the English text of the draft resolution referred to in paragraph 8 above, as follows:

(*a*) The Committee adopted, without objection, the oral amendment of Afghanistan, as revised, deleting in the English text the word "should" from section I, paragraph 5, of the draft resolution;

(*b*) By a separate vote taken at the request of Jamaica, the Committee adopted by 76 votes to none, with 7 abstentions, section I, paragraph 4 (*c*), of the draft resolution;

(*c*) By a separate vote taken at the request of Cuba, and the United Republic of Tanzania and Uruguay and by roll call requested by the latter, the Committee adopted by 70 votes to 1, with 13 abstentions, section III of the draft resolution. The voting was as follows:

In favour: Afghanistan, Australia, Austria, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Greece, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Khmer Republic, Kuwait, Laos, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Malawi, Malaysia, Mexico, Nepal, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Sierra Leone, Spain, Sweden, Thailand, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela.

Against: Cuba.

Abstaining: Argentina, Brazil, Ghana, Guatemala, Guinea, Mali, Mongolia, Morocco, Singapore, Uganda, United Republic of Tanzania, Yugoslavia, Zambia.

(*d*) Lastly, by 82 votes to none, the Committee adopted the draft resolution as a whole, as amended.

167. At the same meeting the representatives of Argentina, Brazil, Cuba, France, India, Jamaica, the United Republic of Tanzania and Uruguay made statements in explanation of vote.

Recommendation of the Sixth Committee

168. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted by the General Assembly without change. See "resolution adopted by the General Assembly" below.*]

(b) *Resolution adopted by the General Assembly*

At its 1999th plenary meeting, on 3 December 1971, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 168 above). For the final text, see resolution 2780 (XXVI) below.

2780 (XXVI). Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its twenty-third session, [82]

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

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[82] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10* (A/8410/Rev.1).

Recalling the recommendations it made in resolution 2634 (XXV) of 12 November 1970 concerning the codification and progressive development of the rules of international law governing the representation of States in their relations with international organizations, succession of States, State responsibility, the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations,

Noting with satisfaction that at its twenty-third session, in 1971, the International Law Commission, in the light of the observations and comments of Member States, Switzerland and the secretariats of various international organizations and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on the representation of States in their relations with international organizations, prepared at its twentieth, twenty-first and twenty-second sessions, and finally adopted the draft articles as the basis of a convention,

Believing that the Vienna Convention on Diplomatic Relations, [83] the Vienna Convention on Consular Relations [84] and the Convention on Special Missions [85] constitute instruments the purpose of which is to contribute to the fostering of friendly relations among nations, irrespective of their constitutional and social systems, and that it is desirable to conclude a convention on the representation of States in their relations with international organizations,

Recognizing the views expressed by the International Law Commission in paragraphs 133 and 134 of its report, in particular those on the importance and urgency of dealing with the problem of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law,

Noting with appreciation that the United Nations Office at Geneva organized, during the twenty-third session of the International Law Commission, a seventh session of the Seminar on International Law,

I

1. *Takes note* of the report of the International Law Commission on the work of its twenty-third session;

2. *Expresses its appreciation* to the International Law Commission for the work it accomplished at its twenty-third session;

3. *Approves* the programme and organization of work of the twenty-fourth session of the International Law Commission to be held in 1972, including the decision to place on the provisional agenda of that session an item entitled "Review of the Commission's long-term programme of work: 'Survey of International Law' prepared by the Secretary-General";

4. *Recommends* that the International Law Commission should:

(*a*) Continue its work on succession of States, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963, with a view to completing in 1972 the first reading of draft articles on succession of States in respect of treaties and making progress in the consideration of succession of States in respect of matters other than treaties;

(*b*) Continue its work on State responsibility, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962,

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

[84] See *Juridical Yearbook*, 1963, p. 109.

[85] *Ibid.*, 1969, p. 125.

1902 (XVIII) of 18 November 1963 and 2400 (XXIII) of 11 December 1968, with a view to making in 1972 substantial progress in the preparation of draft articles on the topic;

(*c*) Continue its study of the most-favoured-nation clause;

(*d*) Continue its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations;

5. *Recommends further* that the International Law Commission, in the light of its scheduled programme of work, decide upon the priority to be given to the topic of the law of the non-navigational uses of international watercourses;

6. *Expresses the wish* that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of an increasing number of jurists of developing countries;

7. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussion on the report of the Commission at the twenty-sixth session of the General Assembly;

II

1. *Expresses its appreciation* to the International Law Commission for its valuable work on the question of representation of States in their relations with international organizations and to the Special Rapporteur on the topic for his contribution to this work;

2. *Invites* Member States and Switzerland as a host State to submit, not later than 1 June 1972, their written comments and observations on the draft articles on representation of States in their relations with international organizations, and on the procedure to be adopted for the elaboration and conclusion of a convention on the subject;

3. *Invites also* the Secretary-General and the executive heads of the specialized agencies and the International Atomic Energy Agency to submit within the same period their written comments and observations on the said draft articles;

4. *Requests* the Secretary-General to circulate, before the twenty-seventh session of the General Assembly, the comments and observations submitted in accordance with paragraphs 2 and 3 above;

5. *Expresses its desire* that an international convention be elaborated and concluded expeditiously on the basis of the draft articles adopted by the International Law Commission and in the light of the comments and observations submitted in accordance with paragraphs 2 and 3 above;

6. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Representation of States in their relations with international organizations";

III

1. *Requests* the Secretary-General to invite comments from Member States before 1 April 1972 on the question of the protection of diplomats and to transmit them to the International Law Commission at its twenty-fourth session;

2. *Requests* the International Law Commission to study as soon as possible, in the light of the comments of Member States, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, with a view to preparing a set of draft articles dealing with offences committed against diplomats and other persons entitled to special protection under international law for

submission to the General Assembly at the earliest date which the Commission considers appropriate.

1999th plenary meeting,
3 December 1971.

B. Decisions, recommendations and reports of a legal character by intergovernmental organizations related to the United Nations

1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Participation of China in the execution of the Programme (88 EX/48 and Add.1 and 2 and 88 EX/49)—Resolution adopted by the Executive Board on 29 October 1971 in the course of its eighty-eighth session [86]

The Executive Board,

1. *Taking into account* the resolution adopted by the United Nations General Assembly on 25 October 1971, [87] whereby the representatives of the People's Republic of China were recognized as the only lawful representatives of China to the United Nations,

2. *Recalling* resolution 396 adopted by the United Nations General Assembly at its fifth regular session on 14 December 1950 recommending that "the attitude adopted by the General Assembly" on the question of the representation of a Member State "should be taken into account in other organs of the United Nations and in the specialized agencies",

3. *Decides* that, from today onwards, the Government of the People's Republic of China is the only legitimate representative of China in UNESCO and *invites* the Director-General to act accordingly.

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Resolution 33/71 adopted by the Conference on 25 November 1971 [88]

People's Republic of China

The Conference,

Recalling that China, after having participated in the Hot Springs Conference in 1943, became a founding Member of FAO in 1945 by accepting the Constitution of the Organization,

Recalling further that, after its establishment in 1949, the Government of the People's Republic of China in a telegram to the Director-General of FAO dated 12 May 1950 affirmed that it was the only legal government representing the Chinese people,

Considering resolution 2758 (XXVI) of 25 October 1971, by which the General Assembly of the United Nations decided to restore all its rights to the People's Republic of China

[86] Document 88 EX/Decisions.

[87] General Assembly resolution 2758 (XXVI).

[88] Reproduced from C.71/REP.

and to recognize the representatives of its Government as the only legitimate representatives of China in the United Nations and "in all the Organizations related to it",

Considering further that the General Assembly of the United Nations, in its resolution 396 (V) of 15 December 1950, recommended that the attitude adopted by the General Assembly concerning the representation of a Member State should be taken into account by the Specialized Agencies,

Noting the exchange of telegrams between the Director-General of FAO and the Government of the People's Republic of China dated respectively 2 November and 23 November 1971,

Pursuant to resolution 2758 (XXVI) of the General Assembly of the United Nations,

1. *Authorizes* the Director-General, when the People's Republic of China manifests the wish to resume its place in the Organization, to take all appropriate measures to bring into effect the resumption by China of its place in the Organization;

2. *Authorizes further* the Director-General to take all necessary measures concerning financial questions, taking into account any action that may be taken by the United Nations in this respect and after consultation with the competent organs of FAO;

3. *Requests* the Director-General to transmit the text of the resolution to the Government of the People's Republic of China.

3. UNIVERSAL POSTAL UNION

Resolution CE 4 adopted by the Executive Council at its 1971 session—Reservations to the Acts of the Union

The Executive Council,

In view of Tokyo Congress resolution C44[89] entrusting it with a study on reservations, and of the discussions held in this connection at Tokyo (Committee 5, 16th meeting);

Taking into account the study undertaken on this subject by the International Bureau (CE/C.3—Doc.19); [90]

Recalling the work already done in this connection and ratified by the Tokyo Congress in regard to postal parcels and insured letters and boxes;

Invites the various Committees of the Executive Council:

a. to consider, each in regard to the Acts coming within its purview, the possible transfer to the Convention and Agreements of the reservations appearing in the Final Protocols to those Acts, in the light of the considerations contained in paragraphs 22-29 of the International Bureau's study and of the comments by Italy (CE/C.3—Doc.19/Add.1);

b. to put forward proposals on the matter to Committee 3, for coordination, with a view to subsequent submission to the Executive Council and, if appropriate, to the 17th Congress.

[89] See *Juridical Yearbook*, 1969, p. 121.

[90] Reproduced in this *Yearbook*, p. 230.

4. WORLD METEOROLOGICAL ORGANIZATION

Excerpt from the General Summary of the Abridged Report with Resolutions of the Sixth World Meteorological Congress. Geneva. 5-30 April 1971[91]

5. General and legal questions (Agenda item 5)

5.1 Questions concerning the Convention (Agenda item 5.1)

5.1.1 Congress examined the proposals concerning Article 28 of the Convention submitted by the Executive Committee [92] following its study of the opinion prepared by the Legal Counsel of the United Nations. [93] In a preliminary general discussion it agreed that there were certain aspects of the matter which could be clarified by means of interpretations; some other aspects could be treated only by an amendment of the Article.

5.1.2 Accordingly, Congress decided to record the following as its agreed interpretation of certain provisions of Article 28 of the Convention:

(*a*) In the course of its consideration, as required by the provisions of Article 28, of a draft amendment to the Convention, Congress may receive, discuss and, if it so decides, adopt any proposal for modifying this draft, provided that the proposed modification would not result in a change in the basic intent of the draft amendment or in the introduction of a new subject. If any modification is proposed which does not satisfy either of these conditions, it must be proposed as a separate new amendment to the Convention in accordance with the provisions of Article 28 (*a*);

(*b*) The two-thirds majority required for the approval by Congress of an amendment under Article 28 (*b*) shall be two-thirds of the Members which are States, present and voting for or against;

(*c*) If a draft amendment to the Convention being treated in accordance with the provisions of Article 28 (*c*) is accepted in Congress by a two-thirds majority of the Members which are States voting for and against, but the number of affirmative votes is less than the required two-thirds majority of all Members which are States, the same draft amendment shall be submitted to the next Congress for a new vote if Congress so decides.

5.1.3 Congress also decided, in agreement with the position taken by Third Congress, that an amendment being treated under the provisions of Article 28 (*c*) shall not be submitted to a vote by correspondence for the purpose of securing approval by the necessary two-thirds majority of Members which are States.

5.1.4 Congress further decided:

(*a*) To accept the recommendation of the Executive Committee that it is not desirable at this time to amend or interpret Article 28 for the purpose of providing that amendments to the Convention which are approved in accordance with the provisions of Article 28 (*b*) shall enter into force for all Members;

(*b*) To take no action regarding the proposal for a fusion of Article 28 (*b*) and 28 (*c*) of the Convention to provide for only one category of amendments.

5.1.5 Certain Members took exception to the decision recorded in paragraph 5.1.2 (*b*).

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[91] WMO Publication No. 292 (1971), pp. 56 and 57.

[92] Cg-VI/Doc.3.

[93] Reproduced in the *Juridical Yearbook*, 1967, p. 338.

5. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Amendment procedures in conventions for which IMCO is depositary—Resolution A. 249 (VII) adopted by the Assembly on 15 October 1971

The Assembly,

Being aware of the need for a procedure for the revision of Conventions for which IMCO is depositary which is more in keeping with the development of technological advances and social needs and which will expedite the adoption of amendments,

Considers that a thorough study should be undertaken by the appropriate organs of IMCO on the basis of document A VII/12 submitted by the Secretariat,

Requests Council therefore to invite the Legal Committee and the Maritime Safety Committee to prepare for the eighth regular session of the IMCO Assembly draft proposals for accelerating the bringing into force of amendments to Conventions for which IMCO is depositary,

Instructs the Secretary-General to seek information meanwhile from Member States or from Contracting Governments, as the case may be, on the difficulties which they may have experienced in considering acceptance of any of the said Conventions or amendments thereto,

Further instructs the Secretary-General to report the results of these inquiries to the Assembly and, as appropriate, to Council, the Maritime Safety Committee and the Legal Committee.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS [1]

The States Parties to this Convention,

Recognizing the common interest of all mankind in furthering the exploration and use of outer space for peaceful purposes,

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,[2]

Taking into consideration that, notwithstanding the precautionary measures to be taken by States and international intergovernmental organizations involved in the launching of space objects, damage may on occasion be caused by such objects,

Recognizing the need to elaborate effective international rules and procedures concerning liability for damage caused by space objects and to ensure, in particular, the prompt payment under the terms of this Convention of a full and equitable measure of compensation to victims of such damage,

Believing that the establishment of such rules and procedures will contribute to the strengthening of international co-operation in the field of the exploration and use of outer space for peaceful purposes,

Have agreed on the following:

Article I

For the purposes of this Convention:

(*a*) The term "damage" means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations;

(*b*) The term "launching" includes attempted launching;

[1] By its resolution 2777 (XXVI) of 29 November 1971, the General Assembly *inter alia* commended the Convention, requested the depositary Governments to open the Convention for signature and ratification at the earliest possible date and expressed its hope for the widest possible adherence to the Convention.

[2] See *Juridical Yearbook*, 1966, p. 166.

(*c*) The term "launching State" means:

(i) A State which launches or procures the launching of a space object;

(ii) A State from whose territory or facility a space object is launched;

(*d*) The term "space object" includes component parts of a space object as well as its launch vehicle and parts thereof.

Article II

A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight.

Article III

In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.

Article IV

1. In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, and of damage thereby being caused to a third State or to its natural or juridical persons, the first two States shall be jointly and severally liable to the third State, to the extent indicated by the following:

(*a*) If the damage has been caused to the third State on the surface of the earth or to aircraft in flight, their liability to the third State shall be absolute;

(*b*) If the damage has been caused to a space object of the third State or to persons or property on board that space object elsewhere than on the surface of the earth, their liability to the third State shall be based on the fault of either of the first two States or on the fault of persons for whom either is responsible.

2. In all cases of joint and several liability referred to in paragraph 1 of this article, the burden of compensation for the damage shall be apportioned between the first two States in accordance with the extent to which they were at fault; if the extent of the fault of each of these States cannot be established, the burden of compensation shall be apportioned equally between them. Such apportionment shall be without prejudice to the right of the third State to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

Article V

1. Whenever two or more States jointly launch a space object, they shall be jointly and severally liable for any damage caused.

2. A launching State which has paid compensation for damage shall have the right to present a claim for indemnification to other participants in the joint launching. The participants in a joint launching may conclude agreements regarding the apportioning among themselves of the financial obligation in respect of which they are jointly and severally liable. Such agreements shall be without prejudice to the right of a State sustaining damage to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

3. A State from whose territory or facility a space object is launched shall be regarded as a participant in a joint launching.

Article VI

1. Subject to the provisions of paragraph 2 of this article, exoneration from absolute liability shall be granted to the extent that a launching State establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of a claimant State or of natural or juridical persons it represents.

2. No exoneration whatever shall be granted in cases where the damage has resulted from activities conducted by a launching State which are not in conformity with international law including, in particular, the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

Article VII

The provisions of this Convention shall not apply to damage caused by a space object of a launching State to:

(*a*) Nationals of that launching State;

(*b*) Foreign nationals during such time as they are participating in the operation of that space object from the time of its launching or at any stage thereafter until its descent, or during such time as they are in the immediate vicinity of a planned launching or recovery area as the result of an invitation by that launching State.

Article VIII

1. A State which suffers damage, or whose natural or juridical persons suffer damage, may present to a launching State a claim for compensation for such damage.

2. If the State of nationality has not presented a claim, another State may, in respect of damage sustained in its territory by any natural or juridical person, present a claim to a launching State.

3. If neither the State of nationality nor the State in whose territory the damage was sustained has presented a claim or notified its intention of presenting a claim, another State may, in respect of damage sustained by its permanent residents, present a claim to a launching State.

Article IX

A claim for compensation for damage shall be presented to a launching State through diplomatic channels. If a State does not maintain diplomatic relations with the launching State concerned, it may request another State to present its claim to that launching State or otherwise represent its interests under this Convention. It may also present its claim through the Secretary-General of the United Nations, provided the claimant State and the launching State are both Members of the United Nations.

Article X

1. A claim for compensation for damage may be presented to a launching State not later than one year following the date of the occurrence of the damage or the identification of the launching State which is liable.

2. If, however, a State does not know of the occurrence of the damage or has not been able to identify the launching State which is liable, it may present a claim within one year following the date on which it learned of the aforementioned facts; however, this period shall in no event exceed one year following the date on which the State could reasonably be expected to have learned of the facts through the exercise of due diligence.

3. The time-limits specified in paragraphs 1 and 2 of this article shall apply even if the full extent of the damage may not be known. In this event, however, the claimant State shall be entitled to revise the claim and submit additional documentation after the expiration of such time-limits until one year after the full extent of the damage is known.

Article XI

1. Presentation of a claim to a launching State for compensation for damage under this Convention shall not require the prior exhaustion of any local remedies which may be available to a claimant State or to natural or juridical persons it represents.

2. Nothing in this Convention shall prevent a State, or natural or juridical persons it might represent, from pursuing a claim in the courts or administrative tribunals or agencies of a launching State. A State shall not, however, be entitled to present a claim under this Convention in respect of the same damage for which a claim is being pursued in the courts or administrative tribunals or agencies of a launching State or under another international agreement which is binding on the States concerned.

Article XII

The compensation which the launching State shall be liable to pay for damage under this Convention shall be determined in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred.

Article XIII

Unless the claimant State and the State from which compensation is due under this Convention agree on another form of compensation, the compensation shall be paid in the currency of the claimant State or, if that State so requests, in the currency of the State from which compensation is due.

Article XIV

If no settlement of a claim is arrived at through diplomatic negotiations as provided for in article IX, within one year from the date on which the claimant State notifies the launching State that it has submitted the documentation of its claim, the parties concerned shall establish a Claims Commission at the request of either party.

Article XV

1. The Claims Commission shall be composed of three members: one appointed by the claimant State, one appointed by the launching State and the third member, the Chairman to be chosen by both parties jointly. Each party shall make its appointment within two months of the request for the establishment of the Claims Commission.

2. If no agreement is reached on the choice of the Chairman within four months of the request for the establishment of the Commission, either party may request the Secretary-

General of the United Nations to appoint the Chairman within a further period of two months.

Article XVI

1. If one of the parties does not make its appointment within the stipulated period, the Chairman shall, at the request of the other party, constitute a single-member Claims Commission.

2. Any vacancy which may arise in the Commission for whatever reason shall be filled by the same procedure adopted for the original appointment.

3. The Commission shall determine its own procedure.

4. The Commission shall determine the place or places where it shall sit and all other administrative matters.

5. Except in the case of decisions and awards by a single-member Commission, all decisions and awards of the Commission shall be by majority vote.

Article XVII

No increase in the membership of the Claims Commission shall take place by reason of two or more claimant States or launching States being joined in any one proceeding before the Commission. The claimant States so joined shall collectively appoint one member of the Commission in the same manner and subject to the same conditions as would be the case for a single claimant State. When two or more launching States are so joined, they shall collectively appoint one member of the Commission in the same way. If the claimant States or the launching States do not make the appointment within the stipulated period, the Chairman shall constitute a single-member Commission.

Article XVIII

The Claims Commission shall decide the merits of the claim for compensation and determine the amount of compensation payable, if any.

Article XIX

1. The Claims Commission shall act in accordance with the provisions of article XII.

2. The decision of the Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith. The Commission shall state the reasons for its decision or award.

3. The Commission shall give its decision or award as promptly as possible and no later than one year from the date of its establishment, unless an extension of this period is found necessary by the Commission.

4. The Commission shall make its decision or award public. It shall deliver a certified copy of its decision or award to each of the parties and to the Secretary-General of the United Nations.

Article XX

The expenses in regard to the Claims Commission shall be borne equally by the parties, unless otherwise decided by the Commission.

Article XXI

If the damage caused by a space object presents a large-scale danger to human life or seriously interferes with the living conditions of the population or the functioning of vital centres, the States Parties, and in particular the launching State, shall examine the possibility of rendering appropriate and rapid assistance to the State which has suffered the damage, when it so requests. However, nothing in this article shall affect the rights or obligations of the States Parties under this Convention.

Article XXII

1. In this Convention, with the exception of articles XXIV to XXVII, references to States shall be deemed to apply to any international intergovernmental organization which conducts space activities if the organization declares its acceptance of the rights and obligations provided for in this Convention and if a majority of the States members of the organization are States Parties to this Convention and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

2. States members of any such organization which are States Parties to this Convention shall take all appropriate steps to ensure that the organization makes a declaration in accordance with the preceding paragraph.

3. If an international intergovernmental organization is liable for damage by virtue of the provisions of this Convention, that organization and those of its members which are States Parties to this Convention shall be jointly and severally liable; provided, however, that:

(*a*) Any claim for compensation in respect of such damage shall be first presented to the organization;

(*b*) Only where the organization has not paid, within a period of six months, any sum agreed or determined to be due as compensation for such damage, may the claimant State invoke the liability of the members which are States Parties to this Convention for the payment of that sum.

4. Any claim, pursuant to the provisions of this Convention, for compensation in respect of damage caused to an organization which has made a declaration in accordance with paragraph 1 of this article shall be presented by a State member of the organization which is a State Party to this Convention.

Article XXIII

1. The provisions of this Convention shall not affect other international agreements in force in so far as relations between the States Parties to such agreements are concerned.

2. No provision of this Convention shall prevent States from concluding international agreements reaffirming, supplementing or extending its provisions.

Article XXIV

1. This Convention shall be open to all States for signature. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern

Ireland and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force on the deposit of the fifth instrument of ratification.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Convention, the date of its entry into force and other notices.

6. This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XXV

Any State Party to this Convention may propose amendments to this Convention. Amendments shall enter into force for each State Party to the Convention accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party to the Convention on the date of acceptance by it.

Article XXVI

Ten years after the entry into force of this Convention, the question of the review of this Convention shall be included in the provisional agenda of the United Nations General Assembly in order to consider, in the light of past application of the Convention, whether it requires revision. However, at any time after the Convention has been in force for five years, and at the request of one third of the States Parties to the Convention, and with the concurrence of the majority of the States Parties, a conference of the States Parties shall be convened to review this Convention.

A ticle XXVII

Any State Party to this Convention may give notice of its withdrawal from the Convention one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

Article XXVIII

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Convention.

DONE in triplicate, at the cities of London, Moscow and Washington, this [twenty-ninth] day of [March], one thousand nine hundred and [seventy-two].

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2. CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION AND STOCKPILING OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS AND ON THEIR DESTRUCTION [3]

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognizing the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[4] and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of 17 June 1925,

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

Desiring also to contribute to the realization of the purposes and principles of the Charter of the United Nations,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Recognizing that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

Have agreed as follows:

Article I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

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[3] By its resolution 2826 (XXVI) of 16 December 1971, the General Assembly commended the Convention, requested the depositary Governments to open the Convention for signature and ratification at the earliest possible date and expressed the hope for the widest possible adherence to the Convention.

[4] League of Nations, *Treaty Series*, vol. XCIV.

(2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Article II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after the entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

Article III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention.

Article IV

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

Article V

The States Parties to this Convention undertake to consult one another and to co-operate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and co-operation pursuant to this article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

Article VI

1. Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

2. Each State Party to this Convention undertakes to co-operate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

Article VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

Article VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

Article IX

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

Article X

1. The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also co-operate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.

2. This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international co-operation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

Article XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

Article XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

Article XIII

1. This Convention shall be of unlimited duration.

2. Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events,

related to the subject-matter of the Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article XIV

1. This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositaries of the Convention.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.

6. This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XV

This Convention, the Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Convention.

DONE intriplicate, at [London, Moscow and Washington], this [tenth] day of [April, one thousand nine hundred and seventy-two].

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(a) *Amendments to article V. 6 of the Constitution* [5]

Article V

Council of the Organization

. . .

6. To assist the Council in performing its functions, the Council shall appoint a Programme Committee, a Finance Committee, a Committee on Constitutional and Legal Matters, a Committee on Commodity Problems, a Committee on Fisheries, a *Committee on Forestry* and a *Committee on Agriculture*.[6] These Committees shall report to the Council and their composition and terms of reference shall be governed by rules adopted by the Conference.

(b) *Amendment to article VII of the Constitution* [7]

Article VII

The Director-General

1. There shall be a Director-General of the Organization who shall be appointed by the Conference for a term of six years, after which he shall not be eligible for reappointment.

2. The appointment of the Director-General under this Article shall be made by such procedures and on such terms as the Conference may determine.

3. Should the office of Director-General become vacant during the above-mentioned term of office, the Conference shall, either at the next regular session or at a special session convened in accordance with Article III, paragraph 6 of this Constitution, appoint a Director-General in accordance with the provisions of paragraphs 1 and 2 of this Article. However, the duration of the term of office of a Director-General appointed at a special session shall expire at the end of the year of the third regular session of the Conference following the date of his appointment.

4. Subject to the general supervision of the Conference and the Council, the Director-General shall have full power and authority to direct the work of the Organization.

5. The Director-General or a representative designated by him shall participate, without the right to vote, in all meetings of the Conference and of the Council and shall formulate for consideration by the Conference and the Council proposals for appropriate action in regard to matters coming before them.

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[5] FAO Conference resolutions 10/71 and 11/71 of 19 November 1971.

[6] Words in italics added by the amendments.

[7] FAO Conference resolution 12/71 of 19 November 1971. The amendment only affects paragraphs 1 to 3. Paragraphs 4 and 5 have not been altered and are merely reproduced to show the new numbering of the paragraphs.

(c) *Amendment to article XI of the Constitution* [8]

Article XI

Reports by Member Nations and Associate Members

1. All Member Nations and Associate Members shall communicate regularly to the Director-General, on publication, the texts of laws and regulations pertaining to matters within the competence of the Organization which the Director-General considers useful for the purposes of the Organization.

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

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

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(a) *Conference for Revision of the Universal Copyright Convention (Paris, July 1971)*

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

The Contracting States,

Moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

Have resolved to revise the Universal Copyright Convention as signed at Geneva on 6 September 1952[9] (hereinafter called "the 1952 Convention"), and consequently,

Have agreed as follows:

Article I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works,

[8] FAO Conference resolution 13/71 of 24 November 1971.

[9] United Nations, *Treaty Series*, vol. 216, p. 133.

including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

Article II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory, as well as the protection specially granted by this Convention.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals, as well as the protection specially granted by this Convention.

3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

Article III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in Article IV, such State shall not be required to comply with the provisions of paragraph 1 of this Article in respect of the second or any subsequent term of copyright.

Article IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of Article II and this Article, by the law of the Contracting State in which protection is claimed.

2. (*a*) The term of protection for works protected under this Convention shall not be less than the life of the author and twenty-five years after his death. However, any

Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of first publication.

(*b*) Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be.

(*c*) If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified in sub-paragraphs (*a*) and (*b*).

3. The provisions of paragraph 2 shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. (*a*) No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

(*b*) For the purposes of the application of sub-paragraph (*a*), if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

Article IV *bis*

1. The rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting. The provisions of this Article shall extend to works protected under this Convention either in their original form or in any form recognizably derived from the original.

2. However, any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the rights mentioned in paragraph 1 of this Article. Any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

Article V

1. The rights referred to in Article I shall include the exclusive right of the author to make, publish and authorize the making and publication of translations of works protected under this Convention.

2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

(*a*) If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in a language in general use in the Contracting State, by the owner of the right of translation or with his authorization, any national of such Contracting State may obtain a non-exclusive licence from the competent authority thereof to translate the work into that language and publish the work so translated.

(*b*) Such national shall in accordance with the procedure of the State concerned, establish either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in a language in general use in the Contracting State are out of print.

(*c*) If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

(*d*) Due provision shall be made by domestic legislation to ensure to the owner of the right of translation a compensation which is just and conforms to international standards, to ensure payment and transmittal of such compensation, and to ensure a correct translation of the work.

(*e*) The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if a language in general use in such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

(*f*) The licence shall not be granted when the author has withdrawn from circulation all copies of the work.

Article V *bis*

1. Any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may, by a notification deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization (hereinafter called "the Director-General") at the time of its ratification, acceptance or accession or thereafter, avail itself of any or all of the exceptions provided for in Articles V *ter* and V *quater*.

2. Any such notification shall be effective for ten years from the date of coming into force of this Convention, or for such part of that ten-year period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, not more than fifteen or less than three months before the expiration of the relevant ten-year period, the Contracting State deposits a further notification with the Director-General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this Article.

3. Notwithstanding the provisions of paragraph 2, a Contracting State that has ceased to be regarded as a developing country as referred to in paragraph 1 shall no longer be entitled to renew its notification made under the provisions of paragraph 1 or 2, and whether or not it formally withdraws the notification such State shall be precluded from availing itself of the exceptions provided for in Articles V *ter* and V *quater* at the end of the current ten-year period, or at the end of three years after it has ceased to be regarded as a developing country, whichever period expires later.

4. Any copies of a work already made under the exceptions provided for in Articles V *ter* and V *quater* may continue to be distributed after the expiration of the period for which notifications under this Article were effective until their stock is exhausted.

5. Any Contracting State that has deposited a notification in accordance with Article XIII with respect to the application of this Convention to a particular country or territory, the situation of which can be regarded as analogous to that of the States referred to in paragraph 1 of this Article, may also deposit notifications and renew them in accordance with the provisions of this Article with respect to any such country or territory. During the effective period of such notifications, the provisions of Articles V *ter* and V *quater* may be applied with respect to such country or territory. The sending of copies from the country or territory to the Contracting State shall be considered as export within the meaning of Articles V *ter* and V *quater*.

Article V *ter*

1. (*a*) Any Contracting State to which Article V *bis* (1) applies may substitute for the period of seven years provided for in Article V (2) a period of three years or any longer period prescribed by its legislation. However, in the case of a translation into a language not in general use in one or more developed countries that are party to this Convention or only the 1952 Convention, the period shall be one year instead of three.

(*b*) A Contracting State to which Article V *bis* (1) applies may, with the unanimous agreement of the developed countries party to this Convention or only the 1952 Convention and in which the same language is in general use, substitute, in the case of translation into that language, for the period of three years provided for in sub-paragraph (*a*) another period as determined by such agreement but not shorter than one year. However, his sub-paragraph shall not apply where the language in question is English, French or Spanish. Notification of any such agreement shall be made to the Director-General.

(*c*) The licence may only be granted if the applicant, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the owner of the right of translation, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre which may have been designated in a notification to that effect deposited with the Director-General by the government of the State in which the publisher is believed to have his principal place of business.

(*d*) If the owner of the right of translation cannot be found, the applicant for a licence shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre as mentioned in sub-paragraph (*c*). If no such centre is notified he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization.

2. (*a*) Licences obtainable after three years shall not be granted under this Article until a further period of six months has elapsed and licences obtainable after one year until a further period of nine months has elapsed. The further period shall begin either from the date of the request for permission to translate mentioned in paragraph 1 (*c*) or, if the identity or address of the owner of the right of translation is not known, from the date of dispatch of the copies of the application for a licence mentioned in paragraph 1 (*d*).

(*b*) Licences shall not be granted if a translation has been published by the owner of the right of translation or with his authorization during the said period of six or nine months.

3. Any licence under this Article shall be granted only for the purpose of teaching, scholarship or research.

4. (*a*) Any licence granted under this Article shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for.

(*b*) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State granting the licence. If the writing bears the notice specified in Article III (1) the copies shall bear the same notice.

(*c*) The prohibition of export provided for in sub-paragraph (*a*) shall not apply where a governmental or other public entity of a State which has granted a licence under this Article to translate a work into a language other than English, French or Spanish sends copies of a translation prepared under such licence to another country if:

(i) the recipients are individuals who are nationals of the Contracting State granting the licence, or organizations grouping such individuals;

(ii) the copies are to be used only for the purpose of teaching, scholarship or research;

(iii) the sending of the copies and their subsequent distribution to recipients is without the object of commercial purpose; and

(iv) the country to which the copies have been sent has agreed with the Contracting State to allow the receipt, distribution or both and the Director-General has been notified of such agreement by any one of the governments which have concluded it.

5. Due provision shall be made at the national level to ensure:

(*a*) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(*b*) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

6. Any licence granted by a Contracting State under this Article shall terminate if a translation of the work in the same language with substantially the same content as the edition in respect of which the licence was granted is published in the said State by the owner of the right of translation or with his authorization, at a price reasonably related to that

normally charged in the same State for comparable works. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

7. For works which are composed mainly of illustrations a licence to translate the text and to reproduce the illustrations may be granted only if the conditions of Article V *quater* are also fulfilled.

8. (*a*) A licence to translate a work protected under this Convention, published in printed or analogous forms of reproduction, may also be granted to a broadcasting organization having its headquarters in a Contracting State to which Article V *bis* (1) applies, upon an application made in that State by the said organization under the following conditions:

(i) the translation is made from a copy made and acquired in accordance with the laws of the Contracting State;

(ii) the translation is for use only in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes set out in condition (ii), through broadcasts lawfully made which are intended for recipients on the territory of the Contracting State, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) sound or visual recordings of the translation may be exchanged only between broadcasting organizations having their headquarters in the Contracting State granting the licence; and

(v) all uses made of the translation are without any commercial purpose.

(*b*) Provided all of the criteria and conditions set out in sub-paragraph (*a*) are met, a licence may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation which was itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(*c*) Subject to sub-paragraphs (*a*) and (*b*), the other provisions of this Article shall apply to the grant and exercise of the licence.

9. Subject to the provisions of this Article, any licence granted under this Article shall be governed by the provisions of Article V, and shall continue to be governed by the provisions of Article V and of this Article, even after the seven-year period provided for in Article V (2) has expired. However, after the said period has expired, the licensee shall be free to request that the said licence be replaced by a new licence governed exclusively by the provisions of Article V.

Article V *quater*

1. Any Contracting State to which Article V *bis* (1) applies may adopt the following provisions:

(*a*) If, after the expiration of (i) the relevant period specified in sub-paragraph (*c*) commencing from the date of first publication of a particular edition of a literary, scientific or artistic work referred to in paragraph 3, or (ii) any longer period determined by national legislation of the State, copies of such edition have not been distributed in that State to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works, by the owner of the right of reproduction or with his authorization, any national of such State may obtain a non-exclusive licence from the competent authority to publish such edition at that or a lower

price for use in connexion with systematic instructional activities. The licence may only be granted if such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to publish such work, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre referred to in sub-paragraph (*d*).

(*b*) A licence may also be granted on the same conditions if, for a period of six months, no authorized copies of the edition in question have been on sale in the State concerned to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works.

(*c*) The period referred to in sub-paragraph (*a*) shall be five years except that:

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(*d*) If the owner of the right of reproduction cannot be found, the applicant for a licence shall send, by registered air mail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre identified as such in a notification deposited with the Director-General by the State in which the publisher is believed to have his principal place of business. In the absence of any such notification, he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization. The licence shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application.

(*e*) Licences obtainable after three years shall not be granted under this Article:

(i) until a period of six months has elapsed from the date of the request for permission referred to in sub-paragraph (*a*) or, if the identity or address of the owner of the right of reproduction is unknown, from the date of the dispatch of the copies of the application for a licence referred to in sub-paragraph (*d*);

(ii) if any such distribution of copies of the edition as is mentioned in sub-paragraph (*a*) has taken place during that period.

(*f*) The name of the author and the title of the particular edition of the work shall be printed on all copies of the published reproduction. The licence shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for. The licence shall not be transferable by the licensee.

(*g*) Due provision shall be made by domestic legislation to ensure an accurate reproduction of the particular edition in question.

(*h*) A licence to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right of translation or with his authorization;

(ii) where the translation is not in a language in general use in the State with power to grant the licence.

2. The exceptions provided for in paragraph 1 are subject to the following additional provisions:

(*a*) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State to which the said licence applies. If the edition bears the notice specified in Article III (1), the copies shall bear the same notice.

(*b*) Due provision shall be made at the national level to ensure:

(i) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(ii) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(*c*) Whenever copies of an edition of a work are distributed in the Contracting State to the general public or in connexion with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the State for comparable works, any licence granted under this Article shall terminate if such editions is in the same language and is substantially the same in content as the edition published under the licence. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

(*d*) No licence shall be granted when the author has withdrawn from circulation all copies of the edition in question.

3. (*a*) Subject to sub-paragraph (*b*), the literary, scientific or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(*b*) The provisions of this Article shall also apply to reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the State with power to grant the licence; always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connexion with systematic intructional activities.

Article VI

"Publication", as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

Article VII

This Convention shall not apply to works or rights in works which, at the effective date of this Convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State.

Article VIII

1. This Convention, which shall bear the date of 24 July 1971, shall be deposited with the Director-General and shall remain open for signature by all States party to the 1952 Convention for a period of 120 days after the date of this Convention. It shall be subject to ratification or acceptance by the signatory States.

2. Any State which has not signed this Convention may accede thereto.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

Article IX

1. This Convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession.

2. Subsequently, this Convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.

3. Accession to this Convention by a State not party to the 1952 Convention shall also constitute accession to that Convention; however, if its instrument of accession is deposited before this Convention comes into force, such State may make its accession to the 1952 Convention conditional upon the coming into force of this Convention. After the coming into force of this Convention, no State may accede solely to the 1952 Convention.

4. Relations between States party to this Convention and States that are party only to the 1952 Convention, shall be governed by the 1952 Convention. However, any State party only to the 1952 Convention may, by a notification deposited with the Director-General, declare that it will admit the application of the 1971 Convention to works of its nationals or works first published in its territory by all States party to this Convention.

Article X

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention.

2. It is understood that at the date this Convention comes into force in respect of any State, that State must be in a position under its domestic law to give effect to the terms of this Convention.

Article XI

1. An Intergovernmental Committee is hereby established with the following duties:

(*a*) to study the problems concerning the application and operation of the Universal Copyright Convention;

(*b*) to make preparation for periodic revisions of this Convention;

(*c*) to study any other problems concerning the international protection of copyright, in co-operation with the various interested international organizations, such as the United Nations Educational, Scientific and Cultural Organization, the International Union for the Protection of Literary and Artistic Works and the Organization of American States;

(*d*) to inform States party to the Universal Copyright Convention as to its activities.

2. The Committee shall consist of the representatives of eighteen States party to this Convention or only to the 1952 Convention.

3. The Committee shall be selected with due consideration to a fair balance of national interests on the basis of geographical location, population, languages and stage of development.

4. The Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director-General of the World Intellectual Property Organization and the Secretary-General of the Organization of American States, or their representatives, may attend meetings of the Committee in an advisory capacity.

Article XII

The Intergovernmental Committee shall convene a conference for revision whenever it deems necessary, or at the request of at least ten States party to this Convention.

Article XIII

1. Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Director-General that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this Convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in Article IX. In the absence of such notification, this Convention shall not apply to any such country or territory.

2. However, nothing in this Article shall be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a country or territory to which this Convention is made applicable by another Contracting State in accordance with the provisions of this Article.

Article XIV

1. Any Contracting State may denounce this Convention in its own name or on behalf of all or any of the countries or territories with respect to which a notification has been given under Article XIII. The denunciation shall be made by notification addressed to the Director-General. Such denunciation shall also constitute denunciation of the 1952 Convention.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

Article XV

A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

Article XVI

1. This Convention shall be established in English, French and Spanish. The three texts shall be signed and shall be equally authoritative.

2. Official texts of this Convention shall be established by the Director-General, after consultation with the governments concerned, in Arabic, German, Italian and Portuguese.

3. Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General other texts in the language of its choice by arrangement with the Director-General.

4. All such texts shall be annexed to the signed texts of this Convention.

Article XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works[10] or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a declaration has been annexed to the present Article. This declaration is an integral part of this Convention for the States bound by the Berne Convention on 1 January 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said declaration, and ratification, acceptance or accession by such States shall include the declaration, as well as this Convention.

Article XVIII

This Convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this Convention, or between the provisions of this Convention and those of any new convention or arrangement which may be formulated between two or more American Republics after this Convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date this Convention comes into force in such State shall not be affected.

Article XIX

This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this Convention, the provisions of this Convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this Convention comes into force in such State shall not be affected. Nothing in this Article shall affect the provisions of Articles XVII and XVIII.

Article XX

Reservations to this Conventions shall not be permitted.

Article XXI

1. The Director-General shall send duly certified copies of this Convention to the States interested and to the Secretary-General of the United Nations for registration by him.

2. He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this Convention comes into force, the notifications under this Convention and denunciations under Article XIV.

Appendix Declaration relating to Article XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works (hereinafter called "the Berne Union") and which are signatories to this Convention,

[10] *Ibid.*, vol. 331, p. 217.

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Berne Convention and the Universal Copyright Convention,

Recognizing the temporary need of some States to adjust their level of some States to adjust their level of copyright protection in accordance with their stage of cultural, social and economic development,

Have, by common agreement, accepted the terms of the following declarations:

(*a*) Except as provided by paragraph (*b*), works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the Berne Union after 1 January 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(*b*) Where a Contracting State is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, and has deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization, at the time of its withdrawal from the Berne Union, a notification to the effect that it regards itself as a developing country, the provisions of paragraph (*a*) shall not be applicable as long as such State may avail itself of the exceptions provided for by this Convention in accordance with Article V *bis*;

(*c*) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.

Resolution concerning

Article XI

The Conference for Revision of the Universal Copyright Convention,

Having considered the problems relating to the intergovernmental Committee provided for in Article XI of this Convention, to which this resolution is annexed,

Resolves that:

1. At its inception, the Committee shall include representatives of the twelve States members of the Intergovernmental Committee established under Article XI of the 1952 Convention and the resolution annexed to it, and, in addition, representatives of the following States: Algeria, Australia, Japan, Mexico, Senegal and Yugoslavia.

2. Any States that are not party to the 1952 Convention and have not acceded to this Convention before the first ordinary session of the Committee following the entry into force of this Convention shall be replaced by other States to be selected by the Committee at its first ordinary session in conformity with the provisions of Article XI (2) and (3).

3. As soon as this Convention comes into force the Committee as provided for in paragraph 1 shall be deemed to be constituted in accordance with Article XI of this Convention.

4. A session of the Committee shall take place within one year after the coming into force of this Convention; thereafter the Committee shall meet in ordinary session at intervals of not more than two years.

5. The Committee shall elect its Chairman and two Vice-Chairmen. It shall establish its Rules of Procedure having regard to the following principles:

(*a*) The normal duration of the term of office of the members represented on the Committee shall be six years with one-third retiring every two years, it being however understood that, of the original terms of office, one-third shall expire at the end of the Committee's second ordinary session which will follow the entry into force of this Convention, a further third at the end of its third ordinary session, and the remaining third at the end of its fourth ordinary session.

(*b*) The rules governing the procedure whereby the Committee shall fill vacancies, the order in which terms of membership expire, eligibility for re-election, and election procedures, shall be based upon a balancing of the needs for continuity of membership and rotation of representation, as well as the considerations set out in Article XI (3).

Expresses the wish that the United Nations Educational, Scientific and Cultural Organization provide its Secretariat.

IN FAITH WHEREOF the undersigned, having deposited their respective full powers, have signed this Convention.

DONE at Paris, this twenty-fourth day of July 1971, in a single copy.

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(2) PROTOCOL 1 ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON 24 JULY 1971 CONCERNING THE APPLICATION OF THAT CONVENTION TO WORKS OF STATELESS PERSONS AND REFUGEES

The States party hereto, being also party to the Universal Copyright Convention as revised at Paris on 24 July 1971 (hereinafter called "the 1971 Convention"),

Have accepted the following provisions:

1. Stateless persons and refugees who have their habitual residence in a State party to this Protocol shall, for the purposes of the 1971 Convention, be assimilated to the nationals of that State.

1. (*a*) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of Article VIII of the 1971 Convention applied hereto.

(*b*) This Protocol shall enter into force in respect of each State, on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

(*c*) On the entry into force of this Protocol in respect of a State not party to Protocol 1 annexed to the 1952 Convention, the latter Protocol shall be deemed to enter into force in respect of such State.

IN FAITH WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Paris this twenty-fourth day of July 1971, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The Director-General shall send certified copies to the signatory States, and to the Secretary-General of the United Nations for registration.

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(3) PROTOCOL 2 ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON 24 JULY 1971 CONCERNING THE APPLICATION OF THAT CONVENTION TO THE WORKS OF CERTAIN INTERNATIONAL ORGANIZATIONS

The States party hereto, being also party to the Universal Copyright Convention as revised at Paris on 24 July 1971 (hereinafter called "the 1971 Convention"),

Have accepted the following provisions:

1. (*a*) The protection provided for in Article II (1) of the 1971 Convention shall apply to works published for the first time by the United Nations, by the Specialized Agencies in relationship therewith, or by the Organization of American States.

(*b*) Similarly, Article II (2) of the 1971 Convention shall apply to the said organization or agencies.

2. (*a*) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of Article VIII of the 1971 Convention applied hereto.

(*b*) This Protocol shall enter into force for each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

IN FAITH WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Paris, this twenty-fourth day of July 1971, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The Director-General shall send certified copies to the signatory States, and to the Secretary-General of the United Nations for registration.

(b) *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms* [11]

The Contracting States,

Concerned at the widespread and increasing unauthorized duplication of phonograms and the damage this is occasioning to the interests of authors, performers and producers of phonograms;

Convinced that the protection of producers of phonograms against such acts will also benefit the performers whose performances, and the authors whose works, are recorded on the said phonograms;

Recognizing the value of the work undertaken in this field by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization;

Anxious not to impair in any way international agreements already in force and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961,[12] which affords protection to performers and to broadcasting organizations as well as to producers of phonograms;

Have agreed as follows:

Article 1

For the purposes of this Convention:

(*a*) "phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds;

(*b*) "producer of phonograms" means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;

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[11] Adopted at Geneva on 29 October 1971, under the joint auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO), by the International Conference of States on the Protection of Phonograms (Geneva, 18-29 October 1971).

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

(*c*) "duplicate" means an article which contains sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds fixed in that phonogram;

(*d*) "distribution to the public" means any act by which duplicates of a phonogram are offered, directly or indirectly, to the general public or any section thereof.

Article 2

Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

Article 3

The means by which this Convention is implemented shall be a matter for the domestic law of each Contracting State and shall include one or more of the following: protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition; protection by means of penal sanctions.

Article 4

The duration of the protection given shall be a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration for the protection, that duration shall not be less than twenty years from the end either of the year which the sounds embodied in the phonogram were first fixed or of the year in which the phonogram was first published.

Article 5

If, as a condition of protecting the producers of phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the authorized duplicates of the phonogram distributed to the public or their containers bear a notice consisting of the symbol ℗, accompanied by the year date of the first publication, placed in such manner as to give reasonable notice of claim of protection; and, if the duplicates or their containers do not identify the producer, his successor in title or the exclusive licensee (by carrying his name, trademark or other appropriate designation), the notice shall also include the name of the producer, his successor in title or the exclusive licensee.

Article 6

Any Contracting State which affords protection by means of copyright or other specific right, or protection by means of penal sanctions, may in its domestic law provide, with regard to the protection of producers of phonograms, the same kinds of limitations as are permitted with respect to the protection of authors of literary and artistic works. However, no compulsory licenses may be permitted unless all of the following conditions are met:

(*a*) the duplication is for use solely for the purpose of teaching or scientific research;

(*b*) the license shall be valid for duplication only within the territory of the Contracting State whose competent authority has granted the license and shall not extend to the export of duplicates;

(c) the duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made.

Article 7

(1) This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, to performers, to producers of phonograms or to broadcasting organizations under any domestic law or international agreement.

(2) It shall be a matter for the domestic law of each Contracting State to determine the extent, if any, to which performers whose performances are fixed in a phonogram are entitled to enjoy protection and the conditions for enjoying any such protection.

(3) No contracting State shall be required to apply the provisions of this Convention to any phonogram fixed before this Convention entered into force with respect to that State.

(4) Any Contracting State which, on October 29, 1971, affords protection to producers of phonograms solely on the basis of the place of first fixation may, by a notification deposited with the Director General of the World Intellectual Property Organization, declare that it will apply this criterion instead of the criterion of the nationality of the producer.

Article 8

(1) The International Bureau of the World Intellectual Property Organization shall assemble and publish information concerning the protection of phonograms. Each Contracting State shall promptly communicate to the International Bureau all new laws and official texts on this subject.

(2) The International Bureau shall, on request, furnish information to any Contracting State on matters concerning this Convention, and shall conduct studies and provide services designed to facilitate the protection provided for therein.

(3) The International Bureau shall exercise the functions enumerated in paragraphs (1) and (2) above in cooperation, for matters within their respective competence, with the United Nations Educational, Scientific and Cultural Organization and the International Labour Organisation.

Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until April 30, 1972, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1) of this Article.

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

Article 10

No reservations to this Convention are permitted.

Article 11

(1) This Convention shall enter into force three months after deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, the Convention shall enter into force three months after the date on which the Director General of the World Intellectual Property Organization informs the States, in accordance with Article 13, paragraph (4), of the deposit of its instrument.

(3) Any State may, at the time of ratification, acceptance or accession or at any later date, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification will take effect three months after the date on which it is received.

(4) However, the preceding paragraph may in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Convention is made applicable by another Contracting State by virtue of the said paragraph.

Article 12

(1) Any Contracting State may denounce this Convention, on its own behalf or on behalf of any of the territories referred to in Article 11, paragraph (3), by written notification addressed to the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the Secretary-General of the United Nations has received the notification.

Article 13

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the Director General of the World Intellectual Property Organization, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of:

(*a*) signatures to this Convention;

(*b*) the deposit of instruments of ratification, acceptance or accession;

(*c*) the date of entry into force of this Convention;

(*d*) any declaration notified pursuant to Article 11, paragraph (3);

(*e*) the receipt of notifications of denunciation.

(4) The Director-General of the World Intellectual Property Organization shall inform the States referred to in Article 9, paragraph (1), of the notifications received pursuant to the preceding paragraph and of any declarations made under Article 7, paragraph (4). He shall also notify the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of such declarations.

(5) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to the States referred to in Article 9, paragraph (1).

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at Geneva, this twenty-ninth day of October, 1971.

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3. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) *Protocol relating to an amendment to the Convention on International Civil Aviation (Article 50 a).*[13] *Signed at New York on 12 March 1971*

The Assembly of the International Civil Aviation Organization

Having met in Extraordinary Session, at New York, on the eleventh day of March 1971,

Having noted that it is the general desire of contracting States to enlarge the membership of the Council,

Having considered it proper to provide for three seats in the Council additional to the six seats which were provided for by the amendment adopted on the twenty-first day of June 1961 to the Convention on International Civil Aviation (Chicago, 1944) and, accordingly, to increase the membership of the Council to thirty,

And having considered it necessary to amend for the purpose aforesaid the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

Approved, on the twelfth day of March 1971, in accordance with the provisions of paragraph *a*) of Article 94 of the Convention aforesaid, the following proposed amendment to the said Convention:

In paragraph *a*) of Article 50 of the Convention, the second sentence shall be deleted and replaced by:

"It shall be composed of thirty contracting States elected by the Assembly."

Specified, pursuant to the provisions of paragraph *a*) of Article 94 of the said Convention, eighty as the number of contracting States upon whose ratification the proposed amendment aforesaid shall come into force, and

Resolved that the Secretary General of the International Civil Aviation Organization draw up a Protocol in the English, French and Spanish languages, each of which shall be of equal authenticity, embodying the proposed amendment above mentioned and the matters hereinafter appearing.

Consequently, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization;

This Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation;

The instruments of ratification shall be deposited with the International Civil Aviation Organization;

This Protocol shall come into force, in respect of the States which have ratified it, on the date on which the eightieth instrument of ratification is so deposited;

The Secretary General shall immediately notify all contracting States of the date of deposit of each ratification of this Protocol;

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[13] *Ibid.*, vol. 15, p. 295.

The Secretary General shall immediately notify all States parties to the said Convention of the date on which this Protocol comes into force;

With respect to any contracting State ratifying this Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Extraordinary Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at New York on the twelfth day of March of the year one thousand nine hundred and seventy-one, in a single document in the English, French and Spanish languages, each of which shall be of equal authenticity. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all States parties to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

(b) *Protocol relating to an amendment to Article 56 of the Convention on International Civil Aviation. Signed at Vienna on 7 July 1971*

The Assembly of the International Civil Aviation Organization

Having met in its Eighteenth Session, at Vienna, on the fifth day of July 1971.

Having noted that it is the general desire of Contracting States to enlarge the membership of the Air Navigation Commission,

Having considered it proper to increase the membership of that body from twelve to fifteen, and

Having considered it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

(1) *Approved*, in accordance with the provisions of Article 94(*a*) of the Convention aforesaid, the following proposed amendment to the said Convention:

"In Article 56 of the Convention the expression 'twelve members' shall be replised by 'fifteen members' "

(2) *Specified*, pursuant to the provisions of the said Article 94(*a*) of the said Convention, eighty as the number of Contracting States upon whose ratification the aforesaid amendment shall come into force, and

(3) *Resolved* that the Secretary General of the International Civil Aviation Organzation shall draw up a Protocol, in the English, French and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matters hereinafter appearing:

a) The Protocoal shall be signed by the President of the Assembly and its Secretary General.

b) The protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.

Consequently, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization;

This Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation;

The instruments of ratification shall be deposited with the International Civil Aviation Organization;

This Protocol shall come into force, in respect of the States which have ratified it, on the date on which the eightieth instrument of ratification is so deposited;

The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of this Protocol;

The Secretary General shall immediately notify all States parties to the said Convention of the date on which this Protocol comes into force;

With respect to any Contracting States ratifying this Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the Eighteenth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Vienna on the seventh day of July of the year one thousand nine hundred and seventy-one, in a single document in the English, French and Spanish languages, each of which shall be of equal authenticity. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all States parties to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

(c) *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. Signed at Montreal on 23 September 1971*

The States Parties to this Convention

Considering that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

Considering that the occurrence of such acts is a matter of grave concern;

Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have agreed as follows:

Article 1

1. Any person commits an offence if he unlawfully and intentionally:

(*a*) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(*b*) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(*c*) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(*d*) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(*e*) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

2. Any person also commits an offence if he:

(*a*) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or

(*b*) is an accomplice of a person who commits or attempts to commit any such offence.

Article 2

For the purposes of this Convention:

(*a*) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(*b*) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (*a*) of this Article.

Article 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

Article 4

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (*a*), (*b*), (*c*) and (*e*) of paragraph 1 of Article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(*a*) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or

(*b*) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (*a*), (*b*), (*c*) and (*e*) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.

4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (*a*), (*b*), (*c*) and (*e*) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (*a*) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (*d*) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

Article 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

(*a*) when the offence is committed in the territory of that State;

(*b*) when the offence is committed against or on board an aircraft registered in that State;

(*c*) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(*d*) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (*a*), (*b*) and (*c*), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include

the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (*b*), (*c*) and (*d*).

Article 9

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.

2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

Article 13

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(*a*) the circumstances of the offence;

(*b*) the action taken pursuant to Article 10, paragraph 2;

(*c*) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 14

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organisation of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 16

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[1]

1. JUDGEMENT NO. 139 (6 APRIL 1971): RAJAPPAN V. SECRETARY-GENERAL OF THE UNITED NATIONS [2]

Conversion of a probationary appointment into a fixed-term appointment — Rule according to which the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment

The applicant entered the service of UNICEF on 11 September 1962 under a probationary appointment for two years. On 1 September 1964, his probationary appointment was converted into a fixed-term appointment for a period up to 10 September 1966. This appointment was successively extended to 10 Septebmer 1967, 10 September 1968 and 10 September 1969. On 22 April 1969, the Regional Director of UNICEF informed the applicant that his contract would not be renewed, the reason for this decision being the abolition of the applicant's post.

In support of his application against the non-renewal of his fixed-term appointment, the applicant contended, *inter alia*, that the conversion from a probationary to a fixed-term appointment was irregular and that UNICEF had stated, in a letter of 8 September 1961, that his probationary contract would be converted into a regular contract subject to satisfactory service and that it appeared from his periodic reports that that condition had been met.

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1971, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization; the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Telecommunication Union, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who has succeeded to the staff member's rights on his death, or who can show that he is entitled to rights under any contract or terms of appointment.

[2] Mr. R. Venkataraman, President; Lord Crook, Vice-President; Mr. Z. Rossides, Member.

The Tribunal noted that the applicant's contention that the conversion of his initial probationary appointment into a fixed-term appointment was irregular had not been raised at the time when the change was made. It noted further that the conversion of the probationary appointment into a regular contract had been expressly made subject, in the relevant letter of the Administration, to the "mutual agreement" of both parties, and, accordingly, to the consent of the Administration. There was, therefore, no commitment by UNICEF to convert the probationary appointment into a regular appointment, even though the applicant's services had been acknowledged to be satisfactory. The Tribunal further recalled that the legal position of the applicant at the time of his separation from service was that of a holder of a fixed-term appointment which, according to staff rule 104.12 (*b*), does not carry "any expectancy of renewal or of conversion to any other type of appointment". Since it was established that there was no commitment by the Organization to retain the applicant or to renew his fixed-term appointment, the claim for renewal lacked substance.

Lastly, the applicant contested the reason, namely, abolition of the post, stated by the Administration for non-renewal of his fixed-term appointment. Since the applicant had not attributed "any prejudice or any other extraneous factors" to UNICEF's action, and since renewal of a fixed-term appointment, in the absence of any commitment or circumstances creating an expectancy, is within the discretion of the Secretary-General, the Tribunal found it unnecessary to pronounce on this matter.

2. JUDGEMENT NO. 140 (8 APRIL 1971): SERAPHIDES v. SECRETARY-GENERAL OF THE UNITED NATIONS [3]

A staff member holding a fixed-term contract who passes the qualifying examination for posts reserved exclusively for permanent staff members — The individual concerned is not entitled to claim appointment to such a post where he has lost his status as a staff member as a result of the expiry of his contract

The applicant had been granted a number of fixed-term appointments, the last of which was due to end on 31 August 1968. In the course of the last such appointment, she took an examination for editorial assistants which, according to an information circular from the Acting Director of Personnel dated 3 April 1968, was open to a certain category of staff members. She was subsequently informed that her name had been placed on a roster of successful candidates and that she would be assigned to a post as an editorial assistant "as a vacancy arises according to the order of merit established in the roster". The roster included 13 names and the applicant was placed fifth. In 1969, her fixed-term appointment not having been extended beyond 31 August 1968, she requested re-employment as an editorial assistant as she had passed the examination. Her request was denied on the grounds that such posts were invariably filled from within the staff of the Organization.

On taking cognizance of the application, the Tribunal considered whether, following the order of merit established in the roster mentioned above, the respondent should have offered the applicant a post as an editorial assistant at the time when the vacancy corresponding to her position on the roster occurred. It noted that the information circular of 3 April had been addressed solely to members of the staff of the Organization and that the examination which it announced had been open only to a certain category of staff members. Moreover, the circular indicated clearly that it concerned the assignment of staff members to posts as editorial assistants and that only after a period of training of at least nine months on the job

[3] Mme P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. V. Mutuale, Member.

could those concerned be recommended for promotion. The circular made no mention of appointments but only of assignments and promotions, which implied that only staff members were eligible for both the invitation to take the examination and assignment to a post as an editorial assistant. Although it considered that it might perhaps have been appropriate to draw attention in the circular to the fact that no one could be assigned to the posts in question who did not retain the status of a staff member of the Organization, the Tribunal held that no legal consequences could be derived from the absence of such a statement. The Tribunal also noted that the applicant held a fixed-term appointment and that according to staff rules, such appointments did not entitle the holder to any expectancy of renewal or of conversion to any other type of appointment. Furthermore, the relevant provision of the Staff Rules had been reproduced verbatim in the letter of appointment sent to the applicant.

Noting that the applicant's status as a staff member of the United Nations had ceased prior to the date on which the vacancy to which she might have been entitled according to the order of merit established in the roster had occurred, the Tribunal concluded that there was no legal commitment on the part of the respondent to apply a procedure which would eventually result in reinstatement of the applicant as a staff member of the Organization.

3. JUDGEMENT NO. 141 (8 APRIL 1971): MAJID V. UNITED NATIONS JOINT STAFF PENSION BOARD [4]

Calculation of the lump sum due to a staff member who exercises the option available under article IV, paragraph 2, of the Regulations of the Joint Staff Pension Fund — No retirement benefit can be considered as having accrued before the day following the date of the termination of service.

On 5 December 1969, in resolution 2524 (XXIV), the General Assembly of the United Nations modified the Regulations of the Joint Staff Pension Fund and, *inter alia*, decided that:

> "... with effect from 1 January 1970:
>
> "(*a*) The standard annual rate for a retirement benefit shall be obtained by multiplying the number of years of the participant's contributory service, not exceeding thirty, by 1/50 of his final average remuneration;
>
> "(*b*) The minimum annual rate for a retirement benefit shall be obtained by multiplying the number of years of the participant's contributory service, not exceeding ten, by the smaller of $180 or 1/30 of his final average remuneration;
>
> "(*c*) Benefits which accrued before 1 January 1970 shall be recalculated in accordance with (*a*) and (*b*) above and shall accrue in such recalculated amounts with effect from that date, save that no additional entitlement shall accrue in respect of any benefit, a part or the whole of which was commuted into a lump sum, except in so far as a part remains which is payable in the form of a periodic benefit, and in respect of that part in the proportion which it bears to the benefit as originally calculated;".

The applicant retired on 31 December 1969, prior to which time he had exercised the option available under article IV, paragraph 2, of the Regulations of the Fund (1967 edition) and had requested payment of one-third of the actuarial equivalent of his retirement benefit in the form of a lump sum. Being aware of the changes the General Assembly had just made in the Regulations of the Fund, he had stated that, since his pension was effective from 1 January 1970, the amount of the lump sum should also be calculated according to the new formula. The Joint Staff Pension Board nevertheless decided that benefits payable to

[4] Mme. P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. V. Mutuale, Member.

participants whose last day of service was 31 December 1969 should be calculated in accordance with the Regulations of the Fund in force on that date.

The Tribunal, taking cognizance of the case, pointed out that the last day of the applicant's period of service was 31 December 1969; that could not be the date on which retirement benefits accrued, since one and the same official in one and the same Organization could not be simultaneously in service and in retirement. Consequently, no retirement benefit accrued to the applicant before 1 January 1970. Accordingly, the applicant's retirement benefit entitlements, both in the form of periodic benefits and a lump sum, were governed by the aforementioned General Assembly resolution 2524 (XXIV) and by the Regulations of the United Nations Joint Staff Pension Fund which came into force on 1 January 1970. In support of the claim that a benefit payable in the form of a lump sum could not be calculated on the basis of the new rate, the respondent cited paragraph (*c*) of the text of General Assembly resolution reproduced above.

The Tribunal took the view that that provision did not apply in the case under consideration; it referred to cases involving "benefits which accrued before 1 January 1970" and "any benefit, a part or the whole of which was commuted into a lump sum". However, the applicant's retirement benefits did not accrue before 1 January 1970 and, prior to that date, the applicant did not receive either a part or the whole of a lump sum.

The respondent also cited article 51 of the Regulations of the Fund (1970 edition) whereby:

> "(*a*) The Regulations shall enter into force and supersede all previous Regulations with effect from 1 January 1970.
>
> "(*b*) No provision shall be construed as applying retroactively to participants in the Fund prior to 1 January 1970 unless expressly stated therein or specifically amended to such effect by the General Assembly with due regard to the provisions of article 50".

The Tribunal observed that there was no question of applying the provisions of the 1970 Regulations retroactively, in other words, of modifying a legal situation established previously on the basis of the 1967 Regulations. It was a question of applying a decision of the General Assembly which took effect from 1 January 1970 to a legal situation—the legal status of a recipient of a retirement pension—which had come into being precisely on 1 January 1970.

The Tribunal therefore quashed the impugned decision and decided that the lump sum representing one-third of the actuarial equivalent of the applicant's retirement benefit should be calculated on the basis of 1/50 of his final average remuneration.

4. JUDGEMENT NO. 142 (14 APRIL 1971): BHATTACHARYYA V. SECRETARY-GENERAL OF THE UNITED NATIONS [5]

Non-renewal of a fixed-term contract—The terms and conditions of employment of a staff member derive not only from his letter of appointment but also from the circumstances in which the contract was concluded—Where a post is abolished, the Administration has an obligation to take account of the seniority of the individual concerned and to endeavour in good faith to find him another post

The applicant had been seconded by the Government of Orissa (India) to enter the service of UNICEF on 2 June 1963 as an Assistant Field Representative under a fixed-term appointment for two years. His letter of appointment provided that "the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of

[5] Mr. R. Venkataraman, President; Lord Crook, Vice-President; Mr. Z. Rossides, Member; Mme. P. Bastid, Vice-President, Alternate Member.

appointment in the Secretariat of the United Nations". Prior to the issue of that letter, however, the applicant had received a letter from the Regional Director of UNICEF, dated 30 January 1963 which contained a passage stating:

> "I would also like to add that for staff members who join us there will be opportunities after their first fixed-term contract for regular employment and for more senior posts in the Organization dependent upon their qualifications and performance."

The letter made no mention of the sentence quoted above, which appeared only subsequently in the letter of appointment.

The applicant's initial appointment was extended for successive terms, the last extending until 31 March 1969. On being informed that his contract would not be extended beyond that date because of the abolition of his post—a decision which was subsequently amended when the UNICEF Administration extended the contract until 30 June 1969—the applicant wrote to the Secretary-General and later filed an appeal with the Joint Appeals Board, which, having regard to the fact that UNICEF had paid the applicant the equivalent of five months' emoluments, recommended that if the Secretary-General considered such compensation to be equitable he should take no further action in the case.

The applicant thereupon filed an application with the Tribunal claiming a right to renewal of his contract and to continuance in post with UNICEF until he reached the age of superannuation. He based his claim on the fact that the letter of 30 January 1963 stated that, depending upon his qualifications and performance, he would have "an opportunity" for regular employment and for more senior posts in the Organization. While it recognized that as a general rule fixed-term appointments do not carry a right of renewal, the Tribunal felt that it had to consider the contracts as a whole, not only by reference to the letter of appointment but also in relation to the circumstances in which it had been concluded. In that connexion, it referred to its Judgement No. 95[6] in which it had stated:

> "The Tribunal in its jurisprudence has established that the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances."

The Tribunal observed in the case under consideration that the antecedents to the letter of appointment, and particularly the letter of the Regional Director, were of significant relevance. According to the statements of the Administration itself, that letter was a studied and fully considered document. Furthermore, unlike certain other letters offering employment which the Tribunal had examined in previous cases, the letter of 30 January 1963 mentioned the opportunities for regular employment and for more senior posts as dependent on qualifications and performance only and not upon mutual agreement between the applicant and the Organization. Noting that a reasonable expectancy of continued employment had been created in the applicant's mind and observing that, according to the dossier, the said applicant's record of performance was of a high standard, the Tribunal found that those circumstances had created a legal expectancy on the part of the applicant of continued employment with UNICEF. It further decided that such legal expectancy created a corresponding obligation on the part of the Respondent to retain the applicant in UNICEF's service.

The Tribunal also noted that the Regional Director had found it necessary to base the decision not to renew the applicant's contract on a ground other than the expiration of his fixed-term contract, namely, the abolition of his post, and thereby acknowledged his duty to justify the decision. It found that the respondent had to take into consideration the

[6] *Judgements of the Administrative Tribunal of the United Nations*, Nos. 87 to 113 (United Nations publication, Sales No. E.68.X.1, p. 70.

seniority of the applicant and also to make a *bona fide* search for an alternative post to which to appoint the applicant within UNICEF, in accordance with the procedure prescribed in Staff Rule 109.1 (*c*). Yet the dossier contained no satisfactory proof that either the seniority of the applicant had been taken into consideration or a search for a suitable alternative post made by the respondent.

The Tribunal pointed out that the performance of an obligation undertaken was difficult in case of the non-renewal of a fixed-term contract and referred back to existing jurisprudence (Judgements Nos. 68 and 92) whereby, where specific performance was impossible, the Tribunal had held that compensation in lieu thereof might prove to be adequate and proper relief. In the case under consideration, the applicant could have anticipated continuation in service until the age of 60, in other words, for a further period of four years. In Judgement No. 132,[7] the Tribunal had held that in the absence of effective performance of duties the situation might be assimilated to a case where services were terminated immediately after the renewal of a contract. In such a situation, a staff member would be entitled to a termination indemnity of one's week salary for each month of uncompleted service. Accordingly, the applicant could expect to receive an amount approximately equivalent to one year's salary. As he had already received an indemnity equivalent to five months' salary, the Tribunal awarded him compensation equivalent to seven months' net base salary.

5. Judgement No. 143 (15 April 1971): Roy v. Secretary-General of the International Civil Aviation Organization[8]

Discharge for misconduct, which led to a decision by the Tribunal to remand a case for correction of the procedure—Termination of services by mutual agreement between the applicant and the Administration—Determination of the date of termination of services

In its Judgement No. 123,[9] the Tribunal, having been seized of an application impugning a decision to effect a discharge from service as a disciplinary measure, ordered that the case should be remanded for correction of the procedure and the payment to the applicant as compensation of a sum equivalent to two months of her net base salary for the loss caused to her by delays resulting from the procedures followed.

On 22 November 1968, the applicant contested the version of the facts on the basis of which the decision had been taken to discharge her for misconduct. The Secretary-General thereupon ordered an investigation to be carried out and communicated the results to the applicant, inviting her to send him her observations. Having examined the dossier, the Secretary General decided to confirm the discharge as a disciplinary measure. The Advisory Joint Appeals Board, on hearing the case, recommended that the Secretary-General should rescind his decision to discharge her, should negotiate the termination of the applicant's services by mutual agreement and should offer her "a date of termination of . . . services and indemnities in keeping with the spirit of the Board's conclusions".

The Secretary General then proposed to the applicant that the termination of her services should be by mutual agreement and she accepted that offer. However, the parties were unable to reach agreement as to the date of termination of services, the applicant proposing 27 May 1970 and the Secretary-General 22 July 1966, the date of the decision to discharge her.

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[7] See *Juridical Yearbook*, 1969, p. 194.

[8] Mme P. Bastid, Vice-President, presiding; Mr. F. T. P. Plimpton, Member; Mr. F. A. Forteza, Member; Mr. V. Mutuale, Alternate Member.

[9] See *Juridical Yearbook*, 1968, p. 171.

On hearing the case, the Tribunal found that the procedure which it had criticized in its Judgement No. 123 had been duly corrected and that the rights of the applicant had been respected. With regard to the date which was to be deemed the date of the termination of services, the Tribunal pointed out that the real date was, of course, 22 July 1966 and that if the fictitious date postulated by the applicant were accepted, it would follow that she would have a right to receive almost four years' salary for work which she had not done. The Tribunal therefore ordered that the termination of the applicant's services should be deemed to have taken place on 22 July 1966. It also decided that the amount of compensation due to the applicant under the provisions of the Service Code should be increased by interest at the rate of 6 per cent per annum from 22 July 1966 to the date of the payment, because of the long period of time which had elapsed since the beginning of the case.

The applicant also claimed an indemnity for the injury caused by a disciplinary measure which was agreed to have been unduly severe. The Tribunal, noting that the Service Code provided that in the event of termination of services by mutual agreement an additional indemnity might be paid by the Secretary-General, awarded the applicant a sum equal to 50 per cent of nine months' salary.

6. JUDGEMENT NO. 144 (16 APRIL 1971): SAMAAN v. SECRETARY-GENERAL OF THE UNITED NATIONS [10]

Submission of a claim which should in the normal way have been subject to the appeal procedure available under article XXXIX of the UNEF Staff Regulations for Local Employees —Referral of the case to the Joint Appeals Board under Staff Rule 111.4 (b) *in view of the unavailability of the normal recourse procedure because of the dissolution of UNEF—Reference to an advisory body as a final recourse does not ensure the judicial or arbitral remedy to which the staff member is entitled*

The applicant was locally recruited at Cairo for service with UNEF in Gaza. Upon the withdrawal of UNEF, he was separated from the service and travelled with his wife to Piraeus. One week later, his wife went to Cairo to settle their affairs and then returned to Greece. At his request, he was reimbursed the travelling expenses incurred by his wife and himself from Gaza to Piraeus. Almost two years later, he requested the Administration to pay him the price of two tickets from Piraeus to Cairo on the grounds that, in accordance with article XVIII, paragraph 6 of the UNEF Staff Regulations for Local Employees, he should have been reimbursed his costs as far as the place where he had been recruited, in other words, Cairo.

Having failed to obtain satisfaction, he informed the Administration of his intention to bring his case before the Administrative Tribunal. He was thereupon informed that he should go first to the Joint Appeals Board, which he did. The Secretary of the Board then requested from the Director of Personnel a ruling on the question of whether, in view of the dissolution of UNEF and the unavailability of the recourse procedure provided in article XXXIX of the UNEF Staff Regulations for Local Employees, the applicant might file an appeal with the Board. The Director of Personnel stated the Administration's position in the following terms in a letter addressed to the applicant:

> "...the Secretary-General has agreed to refer this matter to the Joint Appeals Board at United Nations Headquarters under Staff Rule 111.4 (*b*). By referring this matter to the Joint Appeals Board, the Sectetary-General in no way prejudges any decision which might be taken by the Board regarding their competence to entertain or regarding the receivability of the appeal under Staff Rule 111.3."

[10] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Member; Mr. Z. Rossides, Member; the Lord Crook, Vice-President, Alternate Member.

The Joint Appeals Board found that the Respondent had fulfilled his obligations but recommended that the applicant should receive an *ex gratia* payment as reimbursement of the expense of the travel of his wife from Piraeus to Cairo. The Secretary-General accepted that recommendation. The applicant then filed an application with the Tribunal in which he contended that he was entitled to payment of the cost of travel to Cairo, his place of recruitment, even though the journey had not been undertaken.

The Tribunal had first to consider whether it was competent. In that connexion, it observed that article XXXIX of the UNEF Staff Regulations for Local Employees provided for an internal appeals procedure and that it had not been possible to invoke that procedure in the current case owing to the dissolution of UNEF. It noted that the dossier, and particularly the letter of the Director of Personnel referred to above, showed that the respondent acknowledged the right of the applicant to an appeal procedure and nominated the Joint Appeals Board as the forum for such an appeal in accordance with the Staff Rules. The respondent relied on the second sentence in the passage quoted above from the letter of the Director of Personnel to establish that the appeal to the Appeals Board was to provide an exclusive substitute *ad hoc* procedure for the one envisaged by the UNEF Staff Regulations. The Tribunal nevertheless rejected that restrictive interpretation of the sentence in question which, in its view, was intended merely to confirm the right of the Joint Appeals Board to determine its competence or the receivability of the appeal. The respondent further argued that since an appeal procedure comparable to the one envisaged under the UNEF Staff Regulations had been provided for the applicant, a further appeal to the Tribunal was not available to him. The Tribunal pointed out that the right of staff members of international organizations to have recourse to a judicial or arbitral remedy for settlement of their disputes had been well recognized and referred to the advisory opinion issued by the International Court of Justice on 13 July 1954, in which it was stated:

> "It would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them."

From the fact that the Secretary-General agreed to refer the matter to the Joint Appeals Board *under Staff Rule 111.4* (b), the Tribunal inferred that the report of the Board was intended to be advisory in character. Reference to an advisory body as a final recourse need not ensure the judicial or arbitral remedy to which the staff member was entitled. The Tribunal therefore decided that it was competent.

As to the merits of the case, the Tribunal took the view that the applicant's claim for cost of travel from Greece to Cairo, the place where he was recruited, was based on a misreading of article XVIII, paragraph 6, of the UNEF Staff Regulations which was worded:

> "Should a staff member on separation wish to go to any place outside the area in which the UNEF office is located other than the place from which he was recruited, the travel expenses to be borne by UNEF shall not exceed the maximum amount that would have been payable on the basis of return transportation to the place of recruitment."

The applicant claimed that he was entitled to the maximum amount that would have been payable on the basis of return transporation to Cairo, the place of his recruitment, whether or not he had incurred such expenditure. If the rule had been so intended, it would have stated categorically that a staff member on separation should be paid the cost of return transportation to the place of recruitment. In fact, the words "travel expenses to be borne" would indicate that the travel costs must actually have been incurred, and there was no indication that a staff member could be paid for travel not performed. The Tribunal also noted that article XVIII, paragraph 7 of the UNEF Staff Regulations placed on the staff

member the responsibility for submitting claims for travel expenses immediately upon completion of travel. That was a clear indication that travel must be completed before it became reimbursable. Since travel to Cairo was neither performed nor intended to be performed by the applicant, the question of reimbursement did not arise. The Tribunal therefore rejected the appeal.

7. JUDGEMENT NO. 145 (23 SEPTEMBER 1971): DE BONEL V. SECRETARY-GENERAL OF THE UNITED NATIONS [11]

Appeal against a decision to withhold a termination indemnity on the expiry of a fixed-term contract

The applicant had held a fixed-term appointment of one year which had been extended by one year to 1967. On that date, she was offered a second extension but refused to accept the conditions proposed. While the negotiations were going on, her contract expired, but she nevertheless continued to work for the Organization until 30 November 1967. The period of employment from July to November was subsequently covered by a personnel action which extended her fixed-term appointment for that period.

A claim for payment of a termination indemnity having been rejected, the applicant lodged an appeal with the Joint Appeals Board and later with the Tribunal.

She contended that according to a clause contained in her contract, she was not entitled to any benefits or allowances except those provided in the United Nations conditions of service. The Field Administration Handbook, which, she contended, was binding on the Administration and the staff in the same manner as the Administrative Manual, provided that the terms of appointment of local staff should not normally permit payment of a termination indemnity, *unless the national law of the country in which the field office is established provides for the payment of such indemnity*. The labour legislation of the country in question did provide for the payment of a termination indemnity in the applicant's circumstances.

The Tribunal first pointed out that, according to Staff Rule 109.7 (b), separation as a result of the expiry of a fixed-term appointment should not be regarded as a termination within the meaning of the Staff Regulations and Rules. The applicant could not therefore claim termination indemnity under the Staff Regulations and Rules.

As to the argument based upon the sentence quoted above from the Field Administration Handbook, the Tribunal pointed out that, in its Judgement No. 15[12] it had given a ruling concerning the binding nature of the Administrative Manual by pointing out that, as provided in the Manual itself, "the Administrative Manual shall be the official medium for the issuance of administrative policies, instruction and procedures designed to implement the Staff Rules". On the other hand, the Field Administration Handbook was in the nature of a guide to the field offices and clearly did not create or give rise to any contractual obligations between the Administration and the staff.

Noting the absence of any stipulation regarding the applicability of the local law such as would create a contractual obligation between the Administration and the staff whether in the letter of appointment, in the Staff Regulations and Rules or in the pertinent administrative instructions, the Tribunal held that the applicant's claim for termination indemnity based on local laws failed.

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[11] Mr. R. Venkataraman, President; Lord Crook, Vice-President, Mr. Z. Rossides, Member.

[12] *Judgements of the Administrative Tribunal of the United Nations*, Nos. 1-70 (United Nations publication, Sales No. 58.X.1), p. 43.

8. JUDGEMENT NO. 146 (1 OCTOBER 1971): TOUHAMI V. SECRETARY-GENERAL OF THE UNITED NATIONS [13]

Request for the revision of a judgement of the Tribunal

The applicant requested the revision of Judgement No. 135[14] and sought reinstatement in service at the appropriate level and reimbursement of 1,000 Dirhams, allegedly borrowed from him by a Deputy Resident Representative.

The Tribunal noted that the applicant had sought review of Judgement No. 135 under article 11 of the Statute of the Tribunal and that the Committee on Applications for Review of Administrative Tribunal Judgements had decided that there were no substantial basis for the application for review.

Referring to article 12 of its Statute, the Tribunal pointed out that the applicant had not produced in his application for revision any fact of a decisive nature which had not been before the Tribunal during its consideration of the case. The applicant's main plea had been fully considered by the Tribunal, which had rejected it in its Judgement No. 135. The Tribunal had also ruled that it had no competence to deal with the alleged borrowing of money by the Deputy Resident Representative.

The Tribunal therefore rejected the application.

9. JUDGEMENT NO. 147 (6 OCTOBER 1971): THAWANI V. UNITED NATIONS JOINT STAFF PENSION BOARD [15]

Question of the validation for pension purposes of a period of service completed by a staff member before admission to the Joint Staff Pension Fund as a full participant—A request for validation granted by the Fund and subsequently withdrawn by the staff member concerned cannot be resubmitted after the expiry of the period of one year prescribed in article III, paragraph 1 of the Regulations of the Fund

The applicant had completed a first period of service with FAO from 31 January 1959 to 12 November 1963. During that period, he had been an associate participant and had become a participant as from 1 January 1963. On that date, he had requested and obtained, in accordance with the provisions of article III.1 of the Regulations of the Pension Fund, validation of his period of service from 31 January 1959 to 31 December 1962 and had undertaken to make 20 monthly payments for that purpose. On 17 October 1963, the applicant cancelled his request for validation and consequently obtained a refund of the three monthly instalments which had already been paid. He left the service of FAO on 1 November 1963 and was re-employed on 3 September 1965. On 15 February 1966, he again requested validation of his period of service from 31 January 1959 to 31 December 1962. He was thereupon informed that such validation was no longer possible because the one-year time-limit for electing to validate had expired. Having been seized of the case, the FAO Pension Committee reached the same conclusion and its Secretary pointed out that, as the applicant had become a participant on 1 January 1963, he should have exercised his option at the latest by 31 December 1963. The Joint Staff Pension Board rejected the appeal lodged by the applicant but ruled that the period of prior contributory service restored to him on his return to FAO in September 1965 should have included the period

[13] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Member; Mr. Z. Rossides, Member.

[14] See *Juridical Yearbook*, 1970, p. 137.

[15] Mme P. Bastid, Vice-President, presiding; Mr. F. T. P. Plimpton, Member; Mr. V. Mutuale, Member.

corresponding to the three validation instalment payments which he had made in 1963 before cancellation of his request for validation.

Taking cognizance of the case, the Tribunal took the view that the applicant had definitely surrendered entitlement to validation of the period of service from 31 January 1959 to 31 December 1962 when, having begun to pay the monies due to that end, acting on his own initiative and for personal reasons, he withdrew his request for validation and so obtained the refund of the instalments which he had already paid. Although upon re-employment the applicant obtained restoration of his contributory service as a participant from 1 January 1963 to 12 November 1963, the question of validation did not arise in connexion with that period.

The applicant invoked the fact that the respondent agreed to validate part of the period under consideration as an argument to establish his entitlement to validation of the whole of the period. The Tribunal nevertheless held that the decision to credit the applicant with contributory service corresponding to the three monthly deductions made from his salary prior to the cancellation of his request for validation could not have the implication attributed to it by the applicant. Assuming that it was partly based on the legal grounds invoked by the respondent, it could not have any effect other than that set forth in rule B.24 of the Administrative Rules of the Pension Fund, and applicable in an analogous situation. If the contrary was the case, the decision would represent en *ex gratia* measure whose effect it would not be for the Tribunal to extend.

The request for validation submitted on 15 February 1966 and again on 11 June 1968 was clearly inadmissible since it was submitted after the time-limit of one year prescribed in article III.1 of the Regulations of the Pension Fund had elapsed.

10. Judgement No. 148 (6 October 1971): Halilovic v. United Nations Joint Staff Pension Board [16]

The case of a staff member who had completed a first period of service as an associate participant in the Pension Fund and then, more than two years later a second period of service as a full participant—Appeal against a decision to refuse validation of the first period of service on the dual grounds that the request for validation had not been submitted within the time-limit of one year of the applicant's having become a full participant and because in any event the interval between the cessation of his associate participation and the commencement of his full participation had exceeded two years

The applicant, a technical assistance expert, had been employed by the United Nations from 13 March 1957 to 31 December 1962 and by FAO from 28 June 1965 to 15 November 1970. During the first of those periods of service, the applicant was an associate participant in the Pension Fund from 1 January 1958 to 31 December 1962. During the second period he was a full participant from 11 January 1966 to 15 November 1970, with contributory service to his credit from 28 June 1965. On 2 May 1968, the applicant requested validation of the period from 30 March 1957 to 31 December 1962. Having been informed that, under article III of the Pension Fund Regulations, such validation was impossible because the interval between his ceasing to be an associate participant and becoming a participant exceeded two years, the applicant appealed against that decision to the FAO Staff Pension Committee, which rejected the application for the reasons indicated above. Having been seized of the case, the Standing Committee of the Joint Staff Pension Board rejected the appeal for two reasons, namely, that the request for validation had not been made within

[16] Mme P. Bastid, Vice-President, presiding; Mr. F. T. P. Plimpton, Member; Mr. V. Mutuale, Member.

one year of the applicant's having become a full participant and because in any event the interval between the cessation of his associate participation and the commencement of his full participation had exceeded two years.

The Tribunal noted that article III of the Pension Fund Regulations in force at the time stated:

> "1. When an associate participant or former associate participant becomes a participant under article II, he may, subject to the conditions set forth in paragraphs 4, 5 and 6 of this article, elect within one year to have included in his contributory service:
>
> "(*a*) The period of service during which he was an associate participant, provided it was not interrupted by an interval or intervals totalling more than one year;
>
> "(*b*) Any period of service as a full-time staff member of a member organization prior to his entry into the Fund as an associate participant, during which he was not eligible under article II or II *bis* to become a participant or an associate participant because his appointment was for less than one year or because he had less than one year of service, provided such period was not interrupted by an interval or intervals any of which exceeded thirty days,
>
> provided that the interval between his ceasing to be an associate participant and becoming a participant does not exceed two years."

The Tribunal noted that the interval between the date on which the applicant ceased to be an associate participant, namely, 31 December 1962, and the date on which he became a participant, namely, 11 January 1966, amounted to three years and ten days and that the interval between the cessation of his associate participation and the date from which his contributory service was reckoned, namely, 28 June 1965, amounted to two years, five months and 27 days. The request therefore contravened the terms of the aforementioned article III.

The Tribunal pointed out that the applicant's real complaint was directed to the provision in the Regulations forbidding validation of a prior period of service after an interval of more than two years. However, the Tribunal was not competent to amend the Pension Fund Regulations; its role was limited to applying those Regulations as in force and passing judgement on applications alleging non-observance of them. In the case before it, there had not been any non-observance.

11. Judgement No. 149 (6 October 1971): Mirza v. Secretary-General of the International Civil Aviation Organization [17]

An OPAS contract terminated by the Administration before it had run its normal course, without any fault on the part of the employee concerned or non-observance of the obligations incumbent upon him—An essential requirement for termination in such circumstances is the existence of a cause—In the absence of any specific provision in the contract, the provisions of the ICAO Field Service Staff Rules are applicable, in so far as they are the basis of the "administrative practices" to which, under the terms of its article VII, an OPAS contract is subject, even though the holder of such a contract does not have the status of a staff member of the Organization

The names of the applicant and two other candidates had been proposed to the Nigerian Government for the post of OPAS[18] expert under the operational assistance agreement

[17] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Member; Mr. Z. Rossides, Member.

[18] A feature of an OPAS contract is that it does not confer on its holder the status of a staff member of the Organization in question.

between ICAO and that Government. The UNDP Resident Representative in Nigeria informed ICAO that all three candidates were acceptable to the Government, which had placed the applicant in third place on its list of preference. As the two other candidates later proved to be unavailable for employment, ICAO engaged the applicant for a period of one year. The contract provided in its article IV that it might be terminated by either party upon one month of written notice and that, should the Organization so terminate the contract, it should pay to the officer an indemnity equal to one week's salary for each month of uncompleted service. In its article VII, the contract provided that while the officer did not have the status of a staff member of the Organization, any relevant matter for which no provision was made in the contract should be settled according to the administrative practices of the Organization. Some few days after the applicant's arrival in Nigeria, the Government indicated that it was not prepared to accept him for the post in question. The Organization thereupon terminated his appointment and informed him that, in addition to an amount corresponding to one month's notice, he would be paid the termination indemnity equal to one week's base salary in respect of each uncompleted month of contracted service. The Advisory Joint Appeals Board, having been seized of the case, recommended that the Secretary-General should "take all possible measures to ensure that the appellant obtain compensation equivalent to his base salary under the contract of employment for the whole period of the unfulfilled term, less the amount of indemnity already received". The Secretary-General did not accept that recommendation, whereupon the applicant lodged an appeal with the Tribunal.

The Tribunal pointed out that although the contract stipulated that no indemnity would be due if its termination was based on the misconduct of the officer or on the non-observance of the obligations incumbent upon him, it did not specify the grounds on which the Organization might terminate it. The Tribunal regarded it as an essential requirement of due process that a fixed-term appointment might be terminated before the expiry of the term for cause, but no arbitrarily by giving a month's notice. Article VII, paragraph 3 of the contract provided that:

> "While the Officer does not have the status of an official or a staff member of the Organization, any relevant matter for which no provision is made in this contract shall be settled according to the administrative practices of the Organization."

As the administrative practices of the Organization were based on the Staff Rules, the Tribunal held that the Staff Rules relating to termination were relevant to the determination of the case. The applicant had furthermore been informed that his conditions of service would be those applicable under the ICAO Field Service Staff Rules, it being understood that, as he was not an ICAO staff member, he would not be entitled to participation in the United Nations Joint Staff Pension Fund and would not be issued with a United Nations laissez-passer. From the foregoing, the Tribunal concluded that in the absence of a specific provision in the contract regarding premature termination, the provisions of the ICAO Field Service Staff Rules were applicable to the case even though the applicant did not have the status of a staff member of ICAO.

Rule 9.4 of the Field Service Staff Rules read:

> "The appointment of a staff member may be terminated by the Secretary-General prior to its expiration by the application against the staff member of the disciplinary measures of termination of appointment or of summary dismissal as provided in Part VII of these Rules, or if, in the opinion of the Secretary-General:
>
> "(*a*) The performance by the staff member of his duties and responsibilities is unsatisfactory, or
>
> "(*b*) The staff member is, for reasons of health, incapacitated for further service, or
>
> "(*c*) The necessities of the service require abolition of the post or reduction of the staff; or

"(*d*) The termination of the staff member's appointment would be in the interest of the Organization."

The termination of the applicant's contract did not fall within any of the above categories; in particular, the respondent had not contended that the termination was, in its view, in the interests of the Organization. The decision was not therefore in accordance with the administrative practices envisaged under the Rules and consequently not in accordance with the terms of the contract.

The Tribunal also noted that the Nigerian Government had never given its approval to the respondent's proposal to recruit the applicant. Nevertheless, the evidence in the dossier showed that the respondent had assured the applicant that the necessary approval had been properly secured and that the applicant's employment for the full term of the contract was assured. In view of the fact that the applicant had been unable to find other employment during what would have been the term of his contract and that the respondent had been unable to provide such employment, the Tribunal determined that the respondent should pay to the applicant compensation equivalent to what would have been his net base salary under the contract for the whole period of the unfulfilled term, less the amount of the terminal indemnity already paid.

12. JUDGEMENT NO. 150 (6 OCTOBER 1971): IRANI v. SECRETARY-GENERAL OF THE UNITED NATIONS [19]

The clause in the OPEX contract whereby the Organization establishes arbitration machinery to hear and to decide disputes between itself and the officer in which the latter asserts non-observance of the terms of the contract—The "settlement" of such disputes implies the intervention of an independent, decision-making authority—As a general rule, any decision taken by the Secretary-General on the recommendation of an advisory body is subject to appeal before the Tribunal—The contractual law applicable to OPEX officers is to a large extent analogous in substance to that applicable to staff members—The jurisprudence of the Tribunal concerning its competence with regard to persons who do not have the status of staff members of an international organization

The applicant, originally recruited as a United Nations technical assistance expert, had been transferred to the OPEX Programme. In that capacity, he received three successive one-year contracts, the last of which was due to expire on 31 December 1967. Having informed Headquarters in September 1967 that he was prepared to accept the extension of his contract until December 1968, he was informed that programme provision for his post had been made for 1967 only. In January 1968, Headquarters informed him that his contract could not be extended beyond 31 December 1967. When the applicant claimed payment of his salary, first for the month of January 1968 and then for longer periods, the Acting Secretary of the Joint Appeals Board informed him, on the instructions of the Director of Personnel, that the machinery provided for in article V of his OPEX contract would "take the form of referring the case to the Joint Appeals Board established pursuant to Staff Regulation 11.1 and Staff Rules 111.1-111.4".

The Joint Appeals Board recommended the payment to the applicant of a sum equivalent to three months' salary and the Director of Personnel accepted that recommendation.

Having been seized of the case, the Tribunal decided that it was competent to hear it. It first pointed out that the three agreements governing the applicant's juridical status—that between the United Nations and the Government, the contract between the United Nations

[19] Mme P. Bastid, Vice-President, presiding; Mr. F. T. P. Plimpton, Member; Mr. V. Mutuale, Member.

and the applicant and the contract of employment between the Government and the applicant, —all contained clauses concerning the settlement of disputes. In particular, the contract between the United Nations and the applicant contained a clause which, in the contracts of 1966 and 1967, read:

> "The Organization shall establish appropriate machinery to hear and to decide disputes between itself and the Officer in which the latter asserts non-observance of the terms of his contract."

The Tribunal pointed out that the machinery established should make it possible to hear and "decide" and dispute between the parties, which meant that the Organization undertook to provide for the intervention of an independent, decision-making body. The respondent contended that the Joint Appeals Board was designated as the settlement machinery referred to in article V of the contract. The Tribunal observed that in the communication from the Acting Secretary of the Joint Appeals Board referred to above, there was an express reference to the provisions of the Staff Regulations and Rules whereby the Board was established as a purely advisory body to advise and make recommendations to the Secretary-General. Moreover, the Board had submitted to the Secretary-General, in the usual form, a report containing "recommendations". The final decision had been taken by the Secretary-General, a party to the dispute, not by the Joint Appeals Board. That decision undoubtedly conformed to the Board's recommendations, but it was quite clear from its wording that the Secretary-General did not consider himself bound by the Board's recommendations. As a general rule, any decision taken by the Secretary-General on the advice of the Joint Appeals Board could be appealed before the Tribunal, as had been pointed out in Judgement No. 144.[20]

The respondent contended that, if the applicant was an OPEX officer in the service of a Government and subject only to the authority of that Government and was not a staff member of the Secretariat of the United Nations, the dispute concerning him could not fall within the Tribunal's competence, as defined in article 2 of its Statute.[21] The Tribunal pointed out that the situation of OPEX officers was characterized by the fact the status of official of the beneficiary State was necessarily conditioned by the existence of a contract between the person concerned and the United Nations. That contract established the officer's functions and stipulated that they might be changed only with the approval of the Organization. Furthermore, the contract listed the various benefits to be provided by the Organization, the proposed emoluments being "generally the same as those applicable to its staff members in the category of project personnel". Thirdly, the contract defined the officer's status providing that, being responsible to the Government, he enjoyed immunities which the Organization might, if necessary, waive. He must "conduct himself . . . with the fullest regard for the aims of the Organization and in a manner befitting his status under this contract". Finally, the agreement between the United Nations and the Government provided that OPEX officers should not be required "to perform any function incompatible with such special international status or with the purposes of the United Nations". Thus, there was no question but that the contractual link with the United Nations was an important, if not essential, element determining the consent of a person who agreed to become an OPEX officer. Furthermore, the length of service with the State depended on the length of the contract with the United Nations. It followed that although the applicant's contract with the Organization was not a contract of employment in the usual sense of the word, it was a contract for a specific professional activity in the civil service of the State. The contract included clauses which were found directly or by reference in the customary contracts of staff members of the Secretariat of the Organization.

[20] See above, p. 155.

[21] See foot-note 1.

In other words, the contractual law between the Organization and the person concerned was, to a large extent, analogous in substance to the law applicable to staff members of the Secretariat and often the same texts were, in fact, applicable.

The Tribunal further noted the provisions of article II, paragraph 6, and article VII, paragraph 3, of the contract concluded between the applicant and the United Nations, which, in its view, showed clearly that the administrative situation of an OPEX officer was, in many respects, comparable to that of a staff member of the Secretariat. Accordingly, any dispute which might arise concerning the contract between the Organization and an OPEX officer related to juridical problems which must be settled by application of the body of rules applicable to the international civil service, even though in his professional work the OPEX officer came under the authority of the State.

The Tribunal pointed out that in several cases (see Judgements Nos. 96[22] and 106,[23] it had decided that it was competent to hear applications alleging non-observance of "terms of appointment" of staff members of the Secretariat of the United Nations even though the applicant had never been a staff member of the Secretariat.

The Tribunal recalled that according to the advisory opinion issued on 13 July 1954 by the International Court of Justice, judicial or arbitral remedy for the settlement of any disputes which might arise between the United Nations and its staff was enjoined by "the expressed aim of the Charter to promote freedom and justice for individuals". The right to resort to an impartial decision-making body was affirmed for the benefit of all staff members of international organizations by the Administrative Tribunal of the International Labour Organisation, specifically in its Judgement No. 122.[24]

By agreeing to submit the case to the Joint Appeals Board without extending the latter's competence beyond that laid down in the Staff Rules and Regulations, the respondent had limited the Board to its advisory role. In the circumstances, unless the Tribunal was competent in the case before it, the safeguard of some appeals procedure for the benefit of the applicant would not exist, and article V of the contract between the applicant and the Organization would not be respected. The Tribunal further pointed out that in a dispute between an OPEX officer and ICAO the parties had not contested its competence.[25]

As to the merits of the case, the Tribunal found that the applicant had been duly informed by the respondent that provision for his post had been made for 1967 only and that no authority competent to bind the respondent had entered into a commitment to renew the contract between the United Nations and the applicant, which was the necessary condition for the extension of the applicant's functions as an OPEX officer with the Government. The Tribunal therefore stated that it was unable to agree that the respondent was under an obligation to extend the applicant's contract. Considering that the applicant had been justified in thinking that his contract would be renewed with retroactive effect, the Tribunal took the view that the applicant was entitled to an indemnity and found that the amount already granted by the respondent was reasonable compensation.

13. Judgement No. 151 (14 October 1971): Iyengar v. Secretary-General of the International Civil Aviation Organization [26]

Decision to refuse validation for pension purposes of a period of service during which the applicant had been unable to participate in the Pension Fund because he was prohibited from

[22] See *Juridical Yearbook*, 1965, p. 207.

[23] See *Juridical Yearbook*, 1967, p. 303.

[24] See *Juridical Yearbook*, 1968, p. 175.

[25] See above, Judgement No. 149, p. 160.

[26] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Mr. F. A. Forteza, Member; Mr. Z. Rossides, Alternate Member.

doing so by his Government—Question of whether the participation of the applicant in the Fund was excluded by his conditions of employment

The applicant, an Indian official seconded by his Government, entered the service of ICAO on 30 May 1955. On 1 July 1956, he was granted a two-year appointment and would normally have become a participant in the Joint Staff Pension Fund. It appeared, however, that the Government of India had prohibited him from joining "any pension fund under the Organization". He subsequently received a number of fixed-term appointments. On 7 March 1968, he informed the Organization that the Government of India had amended its rules, by a memorandum of 5 November 1966, in order to permit Indian officials seconded for service in international organizations to join the Pension Fund as full participants, and requested it to make the necessary arrangements to enable him to join the Pension Fund with retroactive effect from 13 May 1955. The Administration replied that his participation had been excluded from 13 May 1955 to 5 November 1966 and that that period could not therefore be validated under article III.1 *in fine* of the Regulations of the Fund. The Advisory Joint Appeals Board, being seized of the case, concluded that if the provisions of the Regulations and Administrative Rules of the Joint Staff Pension Fund were applied, the appeal must fail. Considering however, that the applicant had expressed the desire to join the Fund in 1956 and in 1957 and that one staff member in similar circumstances had been given the benefit of an arrangement that was provided for in the last sentence of article XII, part III of the ICAO Service Code, the Board recommended that the Secretary-General should exercise his discretion to apply to provisions contained in the sentence in question. The Secretary-General accepted that recommendation and agreed to explore the feasibility of making other arrangements, consulting, as far as practicable, the wishes of the applicant.

The applicant's principal contentions before the Tribunal were that his participation had not been excluded under the terms of his appointment and that the prohibition stipulated by the Indian authorities was not one of the terms of his appointment. In the view of the Tribunal, however, it was clear from the dossier, and particularly from a letter in which the applicant had pointed out that he had not been able "to join the Pension Fund until now because my Government rules did not permit such action", that his participation in the Pension Fund was excluded at the time of his entering the service of ICAO. Moreover, the salary deductions were not made for the applicant's contribution to the Pension Fund and the applicant raised no objection or protest, even though the letter of appointment contained the standard clause relating to such deductions. From the correspondence and the conduct of the parties, the Tribunal concluded that the applicant's exclusion from the Joint Staff Pension Fund was mutually understood, accepted and acted upon.

The applicant further contended that on the introduction of the scheme for associate participation in the Pension Fund on 1 January 1958 he should have been enrolled as an associate participant and that the respondent, by his failure and neglect to enroll him as such, had deprived him of his subsequent right to validation of his prior non-pensionable service.

The question of whether the applicant should have been enrolled as an associate participant in 1958 again depended on whether he was excluded from participation by the terms of his employment. The Tribunal observed in that connexion that, according to the applicant, the Government of India had prohibited him "from joining *any* Pension Fund under the Organization". As the associate participation scheme was a part of the Pension Fund under the Organization it must be concluded that the prohibition applied equally to the applicant's becoming an associate participant in the Pension Fund. The Tribunal added that, contrary to what the applicant maintained, the associate participation scheme, which afforded the same rights to disability benefits and widow's or children's benefits to

associate participants as to full participants, was not merely an insurance scheme but was a pension scheme.

Considering that, under the terms of the applicable provisions, a staff member was not eligible for participation or validation if his participation in the Pension Fund had been excluded by his terms of employment, and having reached the conclusion that the applicant's participation in the Pension Fund had been excluded by his terms of employment, the Tribunal rejected the applicant's claim.

The Tribunal nevertheless recognized that the applicant's was a hard case and took note of the respondent's statement that the Secretary-General had agreed, on the recommendation of the Joint Appeals Board, "to exercise [his] discretion in the applicant's case, in the same way and from the same date as was done in October 1960 in the case of another official of the Indian Government employed in ICAO".

14. Judgement No. 152 (16 October 1971): Ashton v. Secretary-General of the International Civil Aviation Organization [27]

Decision to declare a request for validation for pension purposes of a period of prior service irreceivable on the grounds of its late submission—Question of whether the respondent was justified in limiting the scope of the recommendations of the Joint Appeals Board through a plea of time bar based on the non-observance of time limits

Subsequent to the issue of Judgement No. 109,[28] the applicant appealed to the United Nations Joint Staff Pension Board against the ICAO Staff Pension Committee's decision to reject his application for validation for pension purposes, pursuant to article III of the Pension Fund Regulations, of a period of service completed before he became a participant in the Pension Fund. The Joint Staff Pension Board rejected the request on the grounds that it had not been submitted within the time-limit prescribed in article III. It pointed out, however, that it had no jurisdiction to assess the liabilities of an employing organization which flowed from any action or inaction which might have caused the failure to observe the time limit. It added that a request for validation of a prior period of service on the ground that during that service the staff member should have been enrolled in the Fund pursuant to article II and that participation had been wrongfully denied by the employer, would not be a claim for validation under article III but would involve the interpretation of the contractual relationship between the staff member and the organization, to which the Pension Fund was not a party and which it had no competence to ajudicate.

The applicant thereupon requested the Secretary-General, under article XII of the ICAO Service Code and article II of the Pension Fund Regulations in force on 4 October 1952, to decide that he had become a participant in the Pension Fund on that date. When the Secretary-General declined to entertain that claim on the grounds that the applicant had failed to make it within the prescribed time-limit, the case was referred to the Advisory Joint Appeals Board, which was advised by the Secretary-General that the sole question before it was that of the time-limit. The Board recommended the Secretary-General to consider the claim as not barred by time. The Secretary-General nevertheless decided that the applicant's claim was time-barred.

Having been seized of the case, the Tribunal noted that the respondent had confined his pleadings to the preliminary issue that the applicant's main claim was barred by time.

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[27] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Mr. F. A. Forteza, Member; Mr. Z. Rossides, Alternate Member.

[28] See *Juridical Yearbook*, 1967, p. 297.

The Advisory Joint Appeals Board itself, deferring to the wishes of the Secretary-General, had confined its recommendations to the question of time-limits. Under article 7 of the Statute of the Tribunal, an application was not as a general rule receivable unless the staff member concerned had previously submitted the dispute to the Joint Appeals Board and the latter had communicated its opinion to the Secretary-General. By objecting to the examination of the merits of the dispute by the Advisory Joint Appeals Board, the respondent had limited the scope of an appeal to the Tribunal. The Tribunal held that the broad discretion given to the Secretary-General to waive the time-limit for the filling of an appeal might be judiciously exercised in consideration of the merits of the case and it was only after a full examination of all aspects that the Board could make useful recommendations to the Secretary-General. Consequently, the respondent was not justified in limiting the scope of the Board's recommendations through a plea of time bar based on the non-observation of the time-limit.

The respondent contended that the applicant's right of appeal had lapsed and pointed out that the latter's final contract as an expert—which had ended on 5 August 1959 and been replaced by an appointment as a regular staff member of ICAO—stated that the applicant would become a full participant in the Joint Staff Pension Fund with effect from 1 January 1958—which constituted a decision excluding him from the Fund for any period before 1 January 1958; the applicant had failed to appeal—with the consequence that, pursuant to paragraph 4 of the rules governing appeals contained in General Service Instruction—1.4.7, he had lost any right which he had to appeal. The Tribunal rejected that argument on the grounds that on 1 January 1958 the applicant had not been a member of the regular staff of ICAO and that the instruction in question did not apply to him at that time.

The respondent further contended that when the applicant became a regular staff member of ICAO—on 5 August 1959—it had been open to him to appeal under the above-mentioned instruction against his implied exclusion from participation. The Tribunal was not satisfied that the stipulation in the contract referred to above constituted a decision to exclude the applicant from participation in the Fund. Assuming, however, that it was a decision within the meaning of the instruction in question, it appeared from the text of the instruction itself that its provisions applied to any decision notified after they became applicable to a staff member. In the case before it, the alleged decision went back to some 20 months before the relevant rules had become applicable to the applicant. The respondent's argument must therefore be rejected.

The respondent argued in the third place that the applicant's claim was also time-barred pursuant to part VII, paragraph 1, of the ICAO Service Code, which had been in effect from 1 October 1958 and which read:

> "A claim arising from the employment of a staff member shall not be considered if not made in writing within one year of the date of accrual of the entitlement claimed. However, the Secretary-General may, at his discretion, consider claims made beyond that period."

The Tribunal recognized that when the applicant became a member of the regular staff of ICAO, on 5 August 1959, the Service Code became applicable to him. It pointed out that the paragraph quoted above did not specifically provide for cases where the entitlement claimed accrued before the text came into force or became applicable to a particular staff member. In its view, the aim of such a rule was to prevent belated claims and it was therefore applicable to entitlements which accrued earlier; a staff member was allowed one year, reckoned from the date on which the text came into force with respect to him. Consequently, the time-limit of one year must, with respect to the applicant, be reckoned from 5 August 1959 as regards entitlements which had accrued prior to that date.

The Tribunal pointed out in that connexion that, on 13 August 1959, the applicant had submitted to the Administration a memorandum in which he expressed a wish to validate his service prior to 1 January 1958 and asked that it should be treated as a "proper request". The respondent argued that, even assuming it to be a valid request, it had lapsed as no reply had been received from the Secretary-General within the prescribed time-limit. The Tribunal observed that the memorandum in question was not an appeal against an administrative decision but a communication submitting a claim to the Administration and that instruction GSI-1.4.7 was not therefore applicable. However, the Tribunal noted that the Secretary of the ICAO Staff Pension Committee had acknowledged the applicant's memorandum on 5 January 1960 to point out that the "only" article applicable to the applicant was article XVIII. As the applicant had not appealed against that decision under instruction GSI-1.4.7, the Tribunal ruled that his right of appeal was barred by time.

As to the question of whether the respondent failed in his obligation towards the applicant in addressing to him a general circular whose effect was to prevent him from appyting for validation within the prescribed time-limit, the Tribunal noted that the Advisory Joint Appeals Board had made no recommendation on that point and that the claim was not therefore receivable.

B. Decisions of the Administrative Tribunal of the International Labour Organisation [29] [30]

1. JUDGEMENT NO. 172 (3 MAY 1971): FLAD v. WORLD HEALTH ORGANIZATION

Complaint seeking the quashing of a decision to terminate an appointment on grounds of misconduct

The complainant, a staff member of the WHO Regional Office at Brazzaville, was suspended from his functions after charges of theft had been brought against him by the manager of a commercial establishment at Brazzaville. The Administration of the Regional Office was instructed to carry out an administrative investigation, on which it drew up a report. On being requested to provide further explanations, the complainant asked for a report on the incident drawn up by a competent public authority. Two days later, the

[29] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case, of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1969, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the world Intellectual Property Organization, the European Organization for the Safety of Air Navigation and the Universal Postal Union. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Office and disputes relating to the application of the Regulations of the former Staff Pensions Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

[30] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

Regional Director informed the complainant that, in the absence of a reply refuting the charges, he had decided to terminate his appointment on the grounds of misconduct, in accordance with Staff Rule 975. After hearing the case, the Regional Board of Appeal concluded that the sanction imposed was warranted. The Headquarters Board of Inquiry and Appeal, after hearing the case in its turn, considered that the period between the date of the alleged theft and the date of the complaint to the Regional Director was unduly long (11 days). It held that the Administration of the Regional Office and the Regional Board of Appeal had apparently given weight only to the charges brought against the complainant and had failed to consider any evidence at all which might exonerate him or, conversely, establish his guilt beyond any possible doubt. It accordingly recommended that the Regional Director should reinstate the complainant. The Director-General nevertheless confirmed the Regional Director's decision.

The complainant, who had in the meantime obtained a post in FAO, filed a complaint with the Tribunal, asking it to quash the Director-General's decision. The Tribunal pointed out that the charges on the basis of which the complainant's appointment had been terminated had been brought 11 days after the incident to which they related and that the complainant had immediately denied them and given a totally different, and at first sight not improbable, version of the incident. The Administration, for its part, had merely heard the statements of the manager of the commercial establishment and three of his employees. However, further investigations would seem to have been particularly necessary since, to an impartial mind, it must have appeared strange for an official of some status, who had been employed by the World Health Organization for four years and whose wife was also employed by the Organization, should have jeopardized his relatively affluent position by stealing a few articles from a shop.

Finding that the facts leading to the imposition of the sanction were by no means proved, the Tribunal quashed the impugned decision and ordered that the Organization should pay the complainant (*a*) his salary up to the date of his appointment to FAO and (*b*) compensation in the amount of 15,000 French francs.

2. Judgement No. 173 (3 May 1971): Miele v. European Organization for Nuclear Research

Determination of the rate of an invalidity pension—The competence of the Tribunal extends, by virtue of its own Statute, to all decisions based on Staff Rules and Regulations—An organization may not file a complaint with the Tribunal

In Judgement No. 141[31] the Tribunal had ordered that an examination should be carried out by two medical experts to enable it to reach a decision on a complaint impugning a decision adopted in accordance with the Regulations of the CERN Staff Insurance Scheme following an accident which had resulted in permanent partial invalidity.

The Tribunal first pointed out that CERN had accepted its jurisdiction in accordance with article II, paragraph 5, of the Statute of the Tribunal and that, as the complaint concerned the rate of invalidity pension payable under the Regulations of the CERN Staff Insurance Scheme, provisions issued on the basis of the Staff Regulations and Rules which were regarded as forming part of them, the Tribunal was therefore competent to hear the complainant's claims. Whatever the substantive law texts in the light of which the complaint should be examined, the Tribunal's competence derived from its own Statute.

The Tribunal also found that the claims in question were irreceivable to the extent that they related to the reduction of the complainant's pension in that, having regard to article

[31] See *Juridical Yearbook*, 1969, p. 202.

II, paragraph 6, of the Statute of the Tribunal, an organization was not entitled to submit a complaint to the Tribunal, nor, consequently, to enter a claim seeking amendment of the impugned decision to the prejudice of the complainant. If an organization did not accept a staff member's complaint, the only course open to it was to propose that it be dismissed in whole or in part.

As to the right to an invalidity pension, the Tribunal pointed out that article 26 (4) of the Regulations of the Staff Insurance Scheme provided that, if the disability was obviously due, in the opinion of the Management Board, to the staff member's own fault, the pension might be reduced or cancelled. According to the experts, the complainant was consciously simulating his disability, at least for the most part. That constituted fault within the meaning of article 26 (4), for conscious simulation constituted fraud, the highest degree of fault. It was immaterial whether or not the complainant's conscious behaviour had become unconscious; even if the simulation had become to some extent involuntary it resulted from a voluntary form of deception, in other words, from a fault.

The Tribunal added that the complainant could not properly contend that by virtue of article 21 of the Agreement which the Organization had concluded with the Swiss Federal Council the former was bound to ensure, so far as possible and subject to conditions to be agreed upon, the affiliation to Swiss insurance schemes of staff members who were not covered by equivalent social protection by the Organization itself. Had it been committed to paying its staff members benefits equal to those provided for in Swiss law, the Organization would not have failed in that obligation in the present case. Neither under public nor private insurance schemes did Swiss law entitle a person practising conscious simulation to more favourable treatment than that which the complainant had received.

3. Judgement No. 174 (3 May 1971): Chiarappa v. Food and Agriculture Organization of the United Nations

Introduction of a new procedure for appointment to posts of a certain level—Question of the validity of an appointment made according to a former procedure after the introduction of a new procedure

The complainant had learned of the appointment of one of his colleagues to a grade P-5 post to which he himself aspired. The appointment had been made under a procedure whereby division directors submitted the names of candidates directly to the Director-General. Before the appointment in question, that procedure had been changed with effect from 1 January 1969, appointments to grade P-5 posts thereafter being made not by direct selection on the recommendation of the division director but on the advice of a "Senior Professional Staff Selection Committee". The complainant twice requested that the new procedure should be followed in filling the vacancy to which he aspired; he did so on the first occasion before 1 January 1969 and on a second occasion after that date, after the appointment of his colleague had been brought to his attention. He was informed that the appointment in question had been made under the old procedure and that applications for the post had been considered well in advance of the introduction of the new procedure. After requesting, without result, that the post in question should be held vacant and that applications should be submitted to a selection committee, the complainant appealed to the FAO Appeals Committee, which recommended the Director-General to reject the appeal. The decision to that effect by the Director-General was impugned before the Tribunal by the complainant who requested that it should be quashed, contending among other things that the procedure followed in filling the post had been irregular in that no provision regulating the transition from the old to the new procedure had been made and

that the new procedure should accordingly have applied to any decision taken after 1 January 1969.

The Tribunal considered that the question as to whether cases in process on 1 January 1969 should be covered by the old procedure or by the new could be regarded either as a question of law, in which case it was the duty of the Tribunal to decide the matter, or as a question which the Director-General—who unquestionably had power to decide when the new procedure should be brought into force—had power to decide. In accordance with the latter approach—which was that adopted by the Director-General—it was sufficient to note that the decision taken had been that the new procedure should not apply to cases in process. Adopting the former approach, the Tribunal held that: the decision taken must be regarded as the conclusion of a process initiated several weeks before 1 January 1969 and, accordingly, governed by the old procedure. Had the decision been taken with undue delay, the Tribunal might well have regarded such delay as dissociating the decision from the earlier process so that the former procedure would no longer have been applicable. In the event, however, the decision had been taken within a reasonable time after the beginning of the consultations. Whether the first or second approach was adopted, therefore, the result was the same and the Tribunal accordingly rejected the complaint.

4. Judgement No. 175 (3 May 1971): Zednik v. Food and Agriculture Organization of the United Nations

Assessment of the degree of incapacity resulting from an accident while on official duty

The complainant was the holder of a four-year contract which would normally have expired on 15 February 1965. On 24 March 1964, he was involved in a car accident. After undergoing a cure—whose results disappointed him—he lodged a claim for compensation with FAO and thereafter underwent a medical examination which established that the symptoms from which he was suffering were the sequel of the accident and had resulted in a degree of incapacity of between 60 and 70 per cent. Concerned to settle the complainant's case, the Organization decided to set the date of the termination of his service retroactively at 14 May 1965 and, to this end, to regard the appointment which would normally have expired on 15 February 1965 as having been extended to 14 May 1965. In December 1965, the FAO Medical Service recognized that the complainant was suffering from temporary partial incapacity of 60 per cent and recommended that he should undergo a second cure so that the final rate of incapacity could be established. The complainant was awarded compensation on the basis of that degree of temporary incapacity and then underwent the recommended cure. Having considered the report prepared following that cure by the Innsbruck University Clinic, the FAO Medical Officer reached the conclusion that the complainant's condition must thenceforth be considered stationary and reduced the assessment of the degree of incapacity to between 20 and 30 per cent. On considering the complainant's claim for compensation, the Advisory Committee on Compensation Claims recommended, after an inquiry, that the claim for annual compensation should be dismissed in the absence of any proof of loss of earning capacity and further recommended the award of a lump-sum payment in compensation for the impairment of his pulmonary function. The Director-General accepted that recommendation. The complainant then lodged an appeal with the FAO Appeals Committee, which recommended an *ex gratia* payment of $US 10,000. When the Director-General refused to act on that recommendation, the complainant lodged an appeal with the Tribunal.

The complainant contended in the first place that the Organization had drawn patently erroneous conclusions from the report of the Innsbruck University Clinic and that his

condition was by no means stationary but was deteriorating. He alleged that, because of the incapacity resulting from the accident, he had not been re-engaged by FAO up to the age of 65, as would have normally have been the case, and that it had furthermore become impossible for him to resume his original professional activity. He had received appointments after the termination of his contract with FAO solely because the Austrian Government had organized bilateral projects especially for him in which he was responsible for only theoretical work. Moreover, he had been obliged to resign the second such appointment because of the deterioration in his condition. The Organization's reduction of the rate of his compensation on the grounds that he had held appointments after his separation could not therefore be justified.

The complainant also invoked a letter from the Administration containing a passage which read: "(Your application for a post in Jordan) which we shall now submit officially to the Government will be considered favourably and accepted by the Jordanian authorities... Very much will now depend, of course, on the outcome of the medical report requested of (the Organization's Medical Officer)." The complainant argued, on the basis of that letter, that he had been reappointed by FAO and that the appointment was later cancelled. He contends that his case should accordingly have been dealt with under provision 370.391 concerning reinstatement in the event of reappointment within 30 days of the termination of the preceding appointment and that provision 342.524 concerning salary adjustments for a staff member suffering from partial incapacity who remains in the employment of the Organization but is reassigned to a post at a lower salary level.

The Tribunal noted that the dispute centred solely on the degree of permanent partial incapacity, which the Innsbruck University Clinic had assessed at between 60 and 70 per cent and the Organization's Medical Service at between 20 and 30 per cent. It observed that after the expiry of his contract with FAO, the complainant had resumed work in Tunisia—which he could not have done if the degree of incapacity had been 60 per cent. The Tribunal accordingly considered that the rate of incapacity assessed by the Medical Service of the Organization was much more consonant with the evidence in the dossier. It added that the description of the complainant's ailments justified the conclusion of the Medical Service that at least some part of them was attributable exclusively to age as opposed to being the sequel of the accident while on duty. In the circumstances, the complainant could not be considered as suffering, as a result of an injury or illness contracted while on duty, from a degree of incapacity such as would affect his earning capacity. Hence, he did not meet the conditions laid down in provision 342.525 for entitlement to the annual financial compensation provided for therein.

With regard to the claim for the application of Manual provision 370.391, the Tribunal pointed out that the complainant had no right to a new contract and had received no formal offer of appointment because the letter relating to the mission in Jordan expressly stated that a satisfactory medical report was a prerequisite for appointment. Furthermore, it was clear from the evidence in the dossier that the reason why the complainant had not finally been offered the contract for the project in Jordan had to do, not with his partial incapacity, but with his age.

As to the claim for the application of Manual provision 342.524, the Tribunal stated that the provision applied only to staff members who had remained in the service of the Organization. But the complainant could not justifiably claim that he had still been serving as a staff member in September 1965. In fact, his appointment had been due to terminate on 15 February 1965 and the Organization had decided of its own accord to extend it to 14 May 1965 and it had been because of the administrative formalities required for that purpose that the Organization had been unable to inform the complainant before November 1965 that his appointment had been extended until 14 May 1965. As a result of that voluntary

action, the complainant could be regarded as having remained in employment until 14 May 1965 but on that date all connexion between him and FAO had been definitively severed. The Tribunal therefore dismissed the complaint.

5. JUDGEMENT NO. 176 (3 MAY 1971): GOYAL V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Determination of the amount of compensation due to complainant as a result of a previous decision by the Tribunal—A tribunal cannot establish a specific ceiling in determining the amount of such compensation unless its statute contains an express provision to that effect—Need to consider all the factors involved, and not only the basic salary of the individual concerned, in order to ensure equitable compensation for injury suffered

Following Judgement No. 136,[32] whereby the Tribunal ruled that UNESCO should pay the complainant equitable compensation, a difference arose between the parties concerning the amount of such compensation. In consequence, the complainant lodged an appeal with the Tribunal requesting it to set the amount of the compensation.

The Tribunal pointed out that, by virtue of Judgement No. 136, the Organization was liable to pay compensation to the complainant, firstly, for the non-renewal of his contract and, secondly, for the moral injury caused by his suspension, i.e. for the manner of his treatment and the injury done thereby to his reputation and to his prospects of obtaining other employment. It noted that the Organization had referred to the provision in the Statute of the Administrative Tribunal of the United Nations which lays down that the compensation which the Tribunal may award shall not normally exceed the equivalent of two years' net base salary of an applicant. The Organization added that the Administrative Tribunal of the International Labour Organisation had, subject to one exception, adhered to the same maximum. As the case was one of non-renewal and not one of termination the Organization submitted that the total of 18 months' salary which it had offered was generous.

The Tribunal did not agree with that reasoning and stated that:

> "The duty of this Tribunal, as of every other tribunal unless its statute otherwise provides, is to fix as compensation the sum which appears to it to be equitable in all the circumstances. If any limit be imposed upon an equitable amount, it necessarily means that the sum awarded will be less than the complainant deserves. Doubtless, the principle of limitation of liability has been accepted in many systems of law. The basis of it is that in certain spheres of operation it is considered to be in the public interest that a ceiling should be placed on the offender's liability for fault, the injured person being left, if he so desires, to insure himself against any excess. This principle has not, so far as the Tribunal is aware, been generally introduced into the relationship between an employer and his employees. It is far from clear that it governs the relations between the United Nations and its officials, since the Statute of the Administrative Tribunal of the United Nations makes provision for exceptional cases. To the extent to which it does govern such relations, it operates solely by virtue of an express provision in that Statute. Every person, before he becomes an official of the United Nations, in the same way as he can ascertain the Staff Regulations what will be the conditions of his employment, can ascertain that in the event of its termination his compensation may be limited. A tribunal without a similar provision in its statute is not entitled to impose upon an official what would amount in effect to a condition of his employment to which he has not assented. Nor can the duty of the Tribunal to fix the compensation that is just in all these circumstances of the case, neither more or less, be discharged simply by adding up so many years or months of the complainant's salary. The rate of salary which he was enjoying is an important factor to be taken into consideration, but it is not the only factor. Another important factor is the extent to which

[32] See *Juridical Yearbook*, 1969, p. 197.

the complainant has, by obtaining other employment or otherwise, been able to diminish his loss."

Reconsidering all the circumstances of the case, the Tribunal set the total amount of compensation for non-renewal at 15,000 rupees. With regard to compensation for illegal suspension from duty, the Tribunal considered that the essence of the moral injury claimed by the complainant lay in the fact of the abrupt and summary suspension, which was not denied. It took the view that it would not be right to relate the assessment on that score exclusively to the basic salary and pointed out in that connexion that the distress and moral prejudice might be as great to a person receiving a small salary as to a person receiving a large one. The Tribunal nevertheless considered that the rate of salary afforded a guideline and that the six months' salary offered by the Organization (7,000 rupees) was approximately correct.

6. JUDGEMENT NO. 177 (3 MAY 1971): WALTHER AND ZIMMERMANN V. UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION [33]

Complaint seeking reimbursement of taxes levied on salaries and allowances paid by the respondent Organization—Scope of the notion of "national income taxes"—Interpretation of the term "in accordance with the practice followed by other intergovernmental organizations with headquarters located in Geneva" in article 3.17 of the Staff Regulations and Rules of the respondent Organization

When the headquarters of BIRPI was transferred from Berne to Geneva, the complainants, who are Swiss nationals, established themselves in Geneva but left their families in Berne. They therefore continued to pay, in respect of their income from their employment with BIRPI, the federal tax, the cantonal tax (Canton of Berne) and the local tax (for the locality in which their families lived), to which the earnings of Swiss nationals are subject.

In 1963, new Staff Regulations and Rules came into force which contained the following article 3.17:

> "National income taxes levied on BIRPI salaries and allowances shall be reimbursed in accordance with the practice followed by other intergovernmental organizations with headquarters located in Geneva."

Basing themselves on this provision, the complainants applied to the Director of the Organization for reimbursement of the cantonal and local taxes for which they were liable in the Canton of Berne. Their application being refused, the defendants appealed to the Tribunal.

The Tribunal pointed out that the effect of article 3.17 depended on the nationality of the staff members and that:

(*a*) In accordance with the Agreement concluded between the Swiss Federal Council and the Organization (in particular, article 16 (*f*) of the Agreement of 9 December 1970), officials who were not of Swiss nationality were exempted from all federal, cantonal and local taxes on the salaries, emoluments and allowances paid by the Organization. If they were not liable for taxes levied on income in Switzerland, staff members could not obtain the benefit of article 3.17. Conversely, if in their country of origin they paid tax on the income

[33] Paragraph 1 of the considerations in the Judgement contains the following passage relating to the respondents in this case:

> "The Stockholm Convention of 14 July 1967 provides for the replacement of BIRPI by WIPO. All BIRPI officials became WIPO officials, and the liabilities of BIRPI are assumed by WIPO as and when the member States of the former Organization join the new one. Consequently, BIRPI and WIPO are joint respondents in the present case."

covered by article 3.17 they were entitled to invoke that article to claim reimbursement of the sums paid by them to the taxation authorities.

(*b*) Swiss staff members were exempted from payment of direct federal taxes by the Order of 26 June 1964 of the Swiss Federal Council. A distinction had to be made in the case of cantonal and local taxes levied in Switzerland. On the one hand, under the agreement of 5 April 1957 between the Canton of Geneva and the Organization, officials of the latter enjoyed the same privileges and immunities as were granted to the staff of other international organizations, in other words, they were exempt from Geneva taxes, both cantonal and local. The other Swiss cantons, however, had not surrendered their right to levy taxes in respect of Swiss staff members within their fiscal jurisdiction, hence the liability of the complainants for the cantonal and communal taxes levied by the Canton of Berne.

The Tribunal first considered whether the cantonal and local taxes paid by the complainants were "national income taxes" within the meaning of article 3.17. Believing that the notion of national income taxes should be interpreted according to the law of the country in question, the Tribunal based itself on the terminology customary in Swiss tax law and formed the conclusion that the taxes paid by the complainants should be considered as "national income taxes" in the accepted sense of article 3.17 and that the fact that they were cantonal and communal was no bar to the application of that provision. It nevertheless observed that, instead of simply requiring the Organization to reimburse "national income taxes", article 3.17 stated that the reimbursement should be made "in accordance with the practice followed by other intergovernmental organizations with their headquarters at Geneva". There were two possibilities to be considered in interpreting that phrase. First, that staff members of the Organization might be in a situation similar to, or identical with, that of staff members of the other intergovernmental organizations referred to in the article, in which case they were entitled to reimbursement as provided to the extent that it accorded with the practice of those other organizations. Second, that the other organizations in question might have no relevant "practice" or might have adopted a "practice" in cases which were not identical with or even similar to those of staff members of the respondent Organization. In such an event, it would be equally improper, having regard to the purpose of article 3.17, systematically to grant or withhold the right of reimbursement to staff members of the respondent Organization, because to grant it would be to place such officials in a more favourable position than that which they would enjoy if they were able to rely on the "practice" of the other organizations, while to withhold it might deprive article 3.17 of all meaning. That second approach meant that a less categorical conclusion was necessary, namely, that the Organization had a duty to reimburse the taxes paid by its officials to the extent warranted by their status as international officials, particularly in the light of the obligations inherent in that status. As a general rule, an international official might be expected to reside with his family in the locality where he worked.

After making inquiries of the intergovernmental organizations situated in Geneva, the Tribunal concluded that the first of the above possibilities was not relevant. In the circumstances, and in accordance with the rule expounded in connexion with the second possibility, the complainants would be entitled to the reimbursement which they claimed only if their families' residence in Berne, and consequently their liability to taxation there, were justified for special reasons. The Tribunal found that such was not the case in the complaint before it. It pointed out that most international civil servants had no hesitation in settling with their families in the place where they worked, even if that involved more serious disadvantages than those to which the complainants were exposed. The complainants must therefore accept the consequences of a situation which had not been forced upon them.

The Tribunal therefore dismissed the complaint.

7. JUDGEMENT NO. 178 (3 MAY 1971): BOYLE v. INTERNATIONAL TELECOMMUNICATION UNION

Complaint seeking the quashing of a decision whereby the post held by the complainant was graded at a certain level—Limits of the Tribunal's power to interfere with such a decision

The complainant impugned a decision by the Secretary-General of ITU whereby her post was graded at the G-5 level. In that connexion, the Tribunal pointed out that it appeared from resolution No. 7 of the Plenipotentiary Conference meeting in Geneva in 1959 and resolution No. 6 adopted by the same Conference in 1965 in Montreux, as well as from regulation 2.1 of the Staff Regulations and Staff Rules, that it was for the Administrative Council and, subject to its authority, the Secretary-General of ITU, in the exercise of their discretionary powers, to determine and grade posts held by staff members. Consequently, the Administrative Tribunal, which had before it an appeal against a decision of those authorities grading a specific post, could interfere with that decision only if it had been taken without authority, was irregular in form or was tainted by procedural irregularities or by illegality, or was based on incorrect facts, or if essential facts had not been taken into consideration, or if conclusions which were clearly false had been drawn from documents in the dossier, or if authority had been exercised for purposes foreign to the Organization's interests.

The complainant claimed in the first place that the grading of International Telecommunication Union posts had been carried out by two experts whose conclusions had been approved by the competent bodies of ITU and that the experts had defined each post on the basis of two factors: the "field of activity" and the "qualifications required". She claimed that, unlike the draft description of the "field of activities" of her post, the description of the "qualifications required" had not been communicated to her by the Administrative Council and that the Council, being unaware of the rights of the staff and not fully informed, had taken its decision on the basis of procedural irregularities. The Tribunal observed that in view of the nature of the assessment which the experts had had to make of the "qualifications required", there had been no need for them to hear the complainant or to consult her in writing. As soon as their draft description had been prepared, however, the Secretary-General had informed staff members that they could consult the section of the description dealing with "qualifications required" and had set up a special procedure to enable officials to appeal against their job descriptions and gradings. Thus, the grading procedure had given both sides an opportunity to express their views and had safeguarded the right of staff members to be heard before the grading of posts had been made final. The complainant argued that, because of successive periods of leave, she had been unable to avail herself of the remedies open to her, but it was clear from the dossier that she had on two occasions asked for a review of the grading of her post and that her requests had been rejected only after examination of their merits.

The complainant further claimed that she had accepted her post only in view of a promise that it would shortly be graded G-6. The Tribunal nevertheless pointed out that no more than a promise had been involved and that the complainant could not claim any right to have her post regraded G-6. The complainant added that, because of the duties pertaining to her post, the incumbent was required to have a knowledge of more than two languages. The Tribunal took the view that although the appropriateness of the way in which the Secretary-General and the Administrative Council had exercised their discretion was open to discussion, it did not appear from the documents before it that it was tainted by any irregularity such as would justify interference by the Tribunal. The complainant based herself thirdly on a foot-note to annex 3 of the Staff Rules and Regulations, concerning the description of G-5 posts, to the effect that: "Posts of this type necessitating, besides the

required qualifications, the practical knowledge of a third working language should normally be graded G-6." The Tribunal pointed out, however, that the competent authorities of ITU had taken the view that the complainant's post did not call for practical knowledge of a third working language and that she could not therefore properly invoke the foot-note. Finally, the Tribunal pointed out that the grading of each post was based exclusively on objective criteria and that, although the complainant had qualifications superior to those required for the post, which she had accepted on the understanding that it would be upgraded to G-6, and that it was to some extent understandable that she should consider herself to have a grievance, those circumstances afforded no legal basis for the upgrading of the post which she claimed.

The Tribunal consequently dismissed the complaint.

8. Judgement No. 179 (8 November 1971): Varnet v. United Nations Educational, Scientific and Cultural Organization

Obligation of any person called upon to participate in a decision affecting the rights or duties of other persons to withdraw in cases in which his impartiality may be open to question on reasonable grounds—This obligation extends to persons taking part in an advisory capacity in the proceedings of decision-making bodies—The obligation exists in international organizations even in default of any specific text

The complainant had discovered that one of the members of the Advisory Board which had shortly before considered a matter which concerned him was related to one of his supervisors. He thereupon addressed a minute to the Director-General in which he stated that the person in question should have withdrawn and further requested that the decision taken as a result of the proceedings in the Advisory Board should be quashed. The Director-General and, subsequently, the Appeals Board of UNESCO having successively refused his request, the complainant lodged a complaint with the Tribunal.

The Tribunal pointed out that it was a general rule of law that a person called upon to take a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality might be open to question on reasonable grounds. It was immaterial that, subjectively, such a person might consider himself able to take an unprejudiced decision. Nor did the fact that persons affected by a decision suspected the author of prejudice constitute an obligation for him to withdraw. The Tribunal pointed out that persons taking part in an advisory capacity in the proceedings of decision-making bodies were equally subject to the above rules, as were persons required to make recommendations to decision-making bodies; both might sometimes exert a crucial influence on the decision to be taken. The Tribunal stated that, because of its purpose, which was to protect the individual against arbitrary action, that rule applied in international organizations even in default of any specific text. In the case at issue, the Tribunal found that the Advisory Board in question made recommendations in the light of which the competent body took a decision. It followed that the members of the Board were subject to the obligation to withdraw as defined above. Admittedly, the Board's rules of procedure provided for exclusion only where one of its members was required to deal with a matter concerning a staff member belonging to the same department as himself, that specific provision did not exclude the application of the general rules set forth above.

In the event, the Tribunal found that the complainant's criticism of the composition of the Advisory Board was unfounded. It pointed out that there was no direct relationship either by blood or marriage between the complainant and the member of the Board concerned and that the latter could not be regarded as the supervisor of the former in the proper

sense of the term. In the circumstances, there were no grounds for casting reasonable doubt on the impartiality of the member concerned nor, consequently, for requiring him to withdraw.

9. JUDGEMENT NO. 180 (8 NOVEMBER 1971): KOTVA V. INTERNATIONAL ATOMIC ENERGY AGENCY

Receivability of a complaint filed with the Administrative Tribunal of the International Labour Organisation after expiry of the time-limit because it had originally been lodged in error with the Administrative Tribunal of the United Nations, the relevant time-limit having been duly observed—A staff member who retires under a permanent pension scheme is not entitled to termination indemnity

Although the complainant had reached retirement age in 1967, he had received several extensions of contract to enable him to satisfy the requirements of the Austrian social security scheme regarding the number of monthly contributions needed to qualify for a premature old-age pension. On 24 September 1969, he claimed a termination indemnity. His claim having been rejected and his appeals to the Director-General and the Joint Appeals Committee having failed, he filed a complaint with the Administrative Tribunal of the United Nations, whose Executive Secretary informed him that he should address his complaint to the Administrative Tribunal of the ILO, which he did without delay.

The complainant contended before the Tribunal that the termination indemnity provided for in Staff Regulation 4.03 was due not only in case of termination of service but also in case of retirement. He further submitted that, although paragraph 3 (*g*) of annex I of the Staff Regulations and Staff Rules provided that a staff member who was retired under any permanent pension scheme in which the Agency "participates" should not be entitled to termination indemnities, that provision was not applicable in his case because he was entitled at the time to only a so-called "premature" partial old-age pension under the national pension scheme and would not be entitled to a full pension until the age of 65.

The Agency asked the Tribunal to find the complaint irreceivable because of its late submission and, consequently, that it should be rejected.

As to the question of receivability, the Tribunal found that the 90 day time-limit prescribed in article VII, paragraph 2, of its Statute must be held to have been observed if a complaint which it was competent to hear had been submitted to it after the expiry of that time-limit but had been lodged within the 90 day time-limit applicable in the case of the Administrative Tribunal of the United Nations. In support of that view, it noted in particular the fact that some staff members who in general came under its jurisdiction, were under the jurisdiction of the Administrative Tribunal of the United Nations in matters concerning their pension rights. It took the view that it was all the less justifiable to rule the complaint irreceivable inasmuch as: (*a*) it related to the consequences of retirement on reaching the age limit, a question which a person without legal experience might confuse with that of pension rights; (*b*) the complainant, when informed of his error, had immediately filed his complaint with the competent tribunal, and (*c*) there was no clear provision in any rule or regulation or, furthermore, in the impugned decision, to indicate which of the two appelate procedures was to be used.

As to the merits of the case, the Tribunal found that at the time the complainant had left the service of the Agency, he had been entitled to a pension payable by the Austrian authorities. Under paragraph 3 (*g*) of annex 1, his entitlement to that pension debarred him from claiming a termination indemnity. The conditions established in that provision had been satisfied because, in the first place, the Agency had contributed to the fund through

which the pension available to the complainant was financed, in other words, it had "participated" in the pension scheme within the meaning of the provision and, in the second place, the pension was permanent. A pension must be deemed "permanent" within the accepted meaning of the provision in question if its forfeiture depended solely on the free will of the beneficiary. The fact that forfeiture would result from engagement in gainful employment did not affect the permanent nature of the pension—nor did the fact that the pension would have been increased when the complainant reached 65 years of age.

The Tribunal accordingly dismissed the complaint.

10. Judgement No. 181 (8 November 1971): Podniesinski v. United Nations Educational, Scientific and Cultural Organization

Time-limit for appeals to the Tribunal—The time-limit begins on the day following notification of the impugned decision to staff members whether at Headquarters or away from Headquarters—The date to be taken into consideration in determining whether a complaint is submitted within the time-limit is the date of dispatch of the complaint—Non-observance of the time-limit in an appeal to the Director-General, if not invoked by the Director-General when giving his ruling, may not be pleaded at a latter stage in the proceedings

On 8 September 1969 the complainant submitted a claim, which was unsuccessful, for full reimbursement of transport costs and the payment of a repatriation grant in a convertible currency. The decision to refuse his claim was confirmed first on 20 November 1969 by the Assistant Director-General for Administration and later, on 10 December 1969, by the Director of the Bureau of Personnel, acting on the Director-General's instructions. The complainant then appealed to the Appeals Board. The Organization contended that the appeal was time barred. The Appeals Board held that in calculating the time-limit "allowance must be made for a reasonable additional period by the end of which it may be assumed that the communications of the Bureau of Personnel have reached the recipient" and that in default of any provision to that effect in its own statutes, it must apply by analogy the provisions of article 6, paragraph 2, of the Rules of Court of the Tribunal, according to which, "communication of a document or a notification shall be deemed to have been duly effected eight days after its dispatch to the address of the person concerned, provided it is sent by registered post and the fee paid for a certificate of delivery". The Appeals Board accordingly held that the period had started to run from 29 November 1969 and found that the number of working days between that date and 15 January 1970 (the appeal which reached the appeals Board on 23 January 1970 was dated 15 January 1970) did not exceed thirty. As the Organization had not argued the merits, the Appeals Board merely declared the appeal receivable but did not make a recommendation as to its merits. When the Director-General refused to accept the view of the Appeals Board, the complainant appealed to the Tribunal.

The Tribunal drew attention to articles 7 and 8 of the Statutes of the Organization's Appeals Board:

> "*Article 7.* A staff member who wishes to protest against any administrative decision or disciplinary action shall do so in writing within 15 working days of the date of notification of such decision or action if serving at Headquarters, and within 40 working days if serving away from Headquarters, through appropriate channels (Director of department, service or bureau and the Director of the Bureau of Personnel). The protest shall be addressed to the Director-General, who shall give a ruling within 15 working days of the date of the protest if the staff member is serving at Headquarters, or within 30 working days if he is away from Headquarters."
>
> "*Article 8.* If the staff member wishes to appeal against the ruling, or if no ruling is made within 15 working days in the case of a staff member serving at Headquarters, or within 30 days in the case of a staff member serving away from Headquarters, such staff member may request

a hearing by reporting these facts in writing to the Secretary of the Board within an additional period of 15 working days if serving at Headquarters, or within an additional period of 30 working days if serving away from Headquarters. The staff member shall briefly state the issue, indicating his grade, and his department, service or bureau."

"*Article 8* bis. When circumstances preclude observance of the time-limits set for staff members under paragraphs 7 and 8 above, the Director-General may grant an extension."

The Tribunal pointed out in the first place that no appeal against the decision of 20 November 1969 could be lodged with the Appeals Board because it was not a decision of the Director-General. The question at issue, therefore, was whether the appeal was receivable in so far as it impugned the decision of 10 December 1969.

The Tribunal found that it would not be in accordance with the sense of article 8 to set the starting point of the time-limit laid down by that article at eight days after the notification of the decision impugned. In setting a time-limit for staff members serving away from Headquarters which was twice as long as that for those at Headquarters, the article took account of the time required to transmit decisions from bodies at Headquarters to staff members in the field. It followed, in the case at issue, that the time-limit must be held to run as from and including the day after notification of the decision appealed against.

As to the date on which the time-limit began to run, the Tribunal found that the Appeals Board had been right in regarding it as the day on which the appeal had been dispatched and not that on which it had been received. In laying down that a staff member must submit his appeal in writing to the Secretary of the Appeals Board within 15 or 30 days, article 8 implied that the decisive date was that on which the appeal was dispatched. Furthermore, if the starting point was to be the day of receipt, the appellant would be at the mercy of postal delays and could never be sure of acting in time. Furthermore, unless he dispatched his appeal by registered envelope—which he was not required to do under any provision—it would be impossible for him to prove that it had been delivered before the expiry of the time-limit.

Having thus fixed the *terminus a quo* and the *terminus ad quem* of the time-limit, the Tribunal noted that the number of working days comprised between the two dates was less than 30 and consequently found that the appeal was receivable.

The Tribunal did not find it necessary to consider whether the complainant had submitted his protest to the Director-General within the time-limit of 40 days laid down in article 7 of the Statutes of the Appeals Board. If that time-limit had expired, the Director-General could indeed have refused to examine the merits of the complainant's protest. Nevertheless, the ruling given on the instructions of the Director-General made no reference to such late receipt. Furthermore, failure to observe the time-limit laid down in article 7 was not an irregularity which could be pleaded at a later stage in the proceedings. The Organization could not therefore plead non-observance of that provision before the Tribunal.

Having regard to the foregoing considerations, the Tribunal found that the decision taken by the Director-General after the Appeals Board had reached its findings should be quashed and that, as the Organization had not argued the merits of the case, the case should be referred back to the Director-General for a decision on the merits after reference to the Appeals Board.

11. JUDGEMENT NO. 182 (8 NOVEMBER 1971): GLYNN V. WORLD HEALTH ORGANIZATION

Complaint seeking the expunging of an entry from a periodic report—The purpose of periodic reports is to evaluate past performance and conduct and not to give directives for the future

The complainant prayed the Tribunal (*a*) to find that his periodic report was not formulated in accordance with Staff Rules; (*b*) to find that the report was in substance unwarranted, untrue, misleading and without foundation in fact and that by its maintenance on record he had suffered an injustice; and (*c*) to direct that the periodic report should be expunged from his performance record.

The Tribunal noted that the entry in the periodic report complained of was divisible into two parts. The first stated simply: "Work satisfactory". The complainant argued that that was an inadequate appraisal of his work. The Tribunal pointed out that, if such was the case, the remedy available to the staff member was contained in Staff Rule 430.3, which entitled him to attach a statement concerning any part of the report with which he disagreed. The complainant had therefore no ground for impugning that part of the entry. The second part of the entry read: "We hope that Dr. Glynn will use his authority to obtain the signature by the Government of Uganda of several plans of operation in accordance with the instructions drawn up in the Regional Office". The complainant contended that those words implied that he had failed to act in accordance with directives established by the Regional Office and that such a statement was without foundation and unjust to him. The Organization contended that the words were not a criticism of the past performance of the complainant and endorsed the language of the Regional Director who had written that they were intended only to stimulate the complainant to take action in the matter.

However, the Tribunal pointed out that the words complained of were contained in a periodic report designed to valuate past performance and conduct and not to give directives for the future. Moreover, the facts as they appeared in the dossier showed that there had been no act or omission on the part of the complainant such as could prompt a special directive for the future, still less a criticism of his past activities. The Tribunal stated that it should not normally entertain complaints regarding the content of periodic reports in view of the procedure whereby the observations of the staff member concerned could be incorporated in his periodic report. In the circumstances of the case, however, it felt bound to conclude that the words complained of were the result of a total misconception of the situation and found that justice required that they should be expunged. The Tribunal accordingly quashed the decision whereby the Director-General had refused to delete the words in question from the report.

12. JUDGEMENT NO. 183 (8 NOVEMBER 1971): NOWAKOWSKA V. WORLD METEOROLOGICAL ORGANIZATION

Complaint seeking the quashing of a decision to withhold an annual salary increment

Following a decision to withhold from her an annual salary increment, the complainant requested the Secretary-General to review the decision. When the decision was upheld, the complainant lodged an appeal with the Joint Appeals Committee in which she maintained that the report on the basis of which the impugned decision had been taken showed clearly that all the observations contained therein were based on the fact that she had been ill for 70 working days and that the Secretary-General's decision was tainted with prejudice and motivated by other irrelevant factors. The Committee nevertheless recommended the Secretary-General to confirm the decision and its recommendation was accepted. The Tribunal, after considering the case, rejected the complaint. It found that it had not been established that the assessment in the performance report of the complainant's attitude to her work had been influenced by the fact that she had had prolonged absences on sick leave. It was on the basis of that assessment and not because of the sick leave, which he had expressly disregarded, that the Secretary-General had taken his decision. There were therefore no grounds on which the Tribunal could interfere with it.

13. JUDGEMENT NO. 184 (8 NOVEMBER 1971): FARELL-NATALIZIA v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

The Tribunal recorded the withdrawal of suit by the complainant.

14. JUDGEMENT NO. 185 (8 NOVEMBER 1971): OZORIO v. WORLD HEALTH ORGANIZATION

Rule whereby a complaint is receivable only if the decision impugned is final, either because the complainant has tried all internal channels available to him or because he has received no reply from the Administration within a specified time-limit

In letters to the Chief of Personnel, the complainant had asked for (*a*) supplementary remuneration for assuming the responsibilities of a higher post and (*b*) reclassification of his post. When the Chief of Personnel rejected both claims as unjustified, the complainant asked whether the decision was final in the sense of rule 1030.8 (*a*) of the Staff Rules. Some weeks later, the complainant received his performance appraisal report and, according to the Organization, he then agreed that, before replying to his question, the Personnel Section should wait until he had returned his report duly signed. The Personnel Section asked for the return of the report on several occasions, but without success, and the complainant eventually lodged two complaints with the Tribunal relating to points (*a*) and (*b*) referred to above. In the proceedings before the Tribunal, the Organization contended that both complaints were irreceivable, arguing, firstly, that the complainant had agreed that the Administration should delay its reply and, secondly, that by lodging a complaint direct with the Tribunal without first trying all the internal channels the complainant had disregarded the provisions of article VII of the Statute of the Tribunal. Even if it were accepted that the absence of a reply from the Administration could be regarded as silence on its part, such silence had the effect at most of constituting refusal of the claim and the complainant ought therefore to have tried the internal channels available to him.

The Tribunal pointed out that article VII, paragraph 3, of its Statute provides that:

> "Where the Administration fails to take a decision upon any claim of an official within 60 days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of 90 days provided for by the last preceding paragraph shall run from the expiration of the 60 days allowed for the taking of the decision by the Administration."

It also pointed out that that provision should be read in conjunction with paragraph 1 which reads:

> "A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means or resisting it as are open to him under the applicable Staff Regulations."

It followed that the provision could apply only if a complainant had exhausted all internal remedies available to him and was impugning either an explicit decision or the decision implicit in the silence with regard to his claim of the Director-General of the Organization, the final authority competent to give a ruling.

In the case under consideration, as the complainant had received no reply to his request within a reasonable time, the claim ought to have been deemed to have been refused, at which point the complainant ought to have followed the procedure prescribed in Staff Rule 1030 in order to secure a decision by the Director-General—the only decision which could be impugned before the Administrative Tribunal. As the complainant had failed to follow that procedure, his complaint was not receivable.

The Tribunal, nevertheless, pointed out that the Administration had not replied to the complainant's request because, without good reason, it had made a reply conditional upon the complainant's signature of his report. That position had misled the complainant and had, in effect, prevented him from following the procedure laid down by the Staff Rule 1030. Consequently, and having regard to the circumstances peculiar to the case, the complainant's procedural error might be excused.

The Tribunal accordingly decided to refer the complainant back to the Director-General of WHO for a ruling by the Organization on his claim in accordance with the procedure laid down in the Staff Rules.

15. JUDGEMENT NO. 186 (8 NOVEMBER 1971): BURDON V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint seeking the validation for pension purposes of a period of service completed by the complainant prior to enrolment in the Pension Fund

The complainant took up employment with FAO at the beginning of 1952 as a technical assistance expert on an initial appointment of one year which was extended on successive occasions. In 1953, he was informed that it would not be possible for him to subscribe to the Pension Fund. In 1957 he was given an appointment under the Expanded Programme of Technical Assistance and was informed that he would be eligible for admission, at his request, to the United Nations Joint Staff Pension Fund with effect from 1 February 1957. On raising the question of the validation of his previous service, he was informed on 13 February 1957 by the Secretary of the FAO Staff Pension Committee that he might not validate for pension purposes a period during which he had been employed under a contract of employment which specifically excluded his participation in the Pension Fund. Following that exchange of correspondence, he submitted an application for enrolment in the Joint Staff Pension Fund in March 1957, without requesting the validation of the previous service. It was not until 14 November 1961 that he asked for his pension rights to be backdated by three years or more. On 14 February 1962, the Secretary of the FAO Staff Pension Committee again informed him that his previous periods of service could not be validated. In 1967, the complainant formally requested the validation of his service prior to 1967. The FAO Joint Staff Pension Fund refused his request on the grounds that it was time-barred and unfounded, as did the United Nations Joint Staff Pension Fund. The complaint thereupon appealed to the United Nations Administrative Tribunal, impugning the decision concerning non-validation and contending further that the Organization ought to have enrolled him in the Joint Staff Pension Fund in accordance with his contracts of employment as from his first appointment. In its judgement No. 127[34] that Tribunal noted that the service performed between 1952 and 1957 had been neither on a contract basis for less than one year nor for a period of service of less than one year, so that the complainant could not avail himself of article III of the Pension Fund Regulations. Accordingly, it dismissed the complainant's pleas impugning the decision to refuse validation in respect of his previous service.

As to the question whether, from 1953 onwards, the complainant had been entitled to enrolment in the Pension Fund under the provisions of the FAO Manual and was entitled to validation and whether FAO, having failed to arrange such enrolment, had denied the complainant his rights under his contract and terms of employment, the Tribunal stated that it was not competent to take cognizance of the contentions because the point at issue was the interpretation of the successive contracts of employment of the complainant and FAO

[34] See *Juridical Yearbook*, 1969, p. 183.

Regulations, for which the Administrative Tribunal of the ILO was the competent jurisdiction in accordance with article XI of FAO Staff Regulations.

Thereafter, on 13 June 1969, the complainant requested the Director-General of FAO to take the necessary measures to backdate his membership of the Joint Staff Pension Fund to 5 January 1952. His request was rejected on the ground that it was a request for enrolment in the Fund which he had submitted for the first time to the Administrative Tribunal of the United Nations whereas, for it to be receivable, it should have been submitted several years earlier. Having appealed unsuccessfully to the FAO Appeals Committee, the complainant filed a complaint with the Administrative Tribunal of the ILO requesting it to order the Organization to register him as a participant in the Joint Staff Pension Fund as from 5 January 1953 and to backdate this participation to 5 January 1952.

The Tribunal pointed out that FAO Staff Rule 303.131 provides that:

> "A staff member who wishes to lodge an appeal shall state his case in a letter to the Director-General through the department head or division director. In the case of an appeal against an administrative decision or a disciplinary action, the letter shall be dispatched to the Director-General within two weeks after receipt of the notification of the decision impugned. If the staff member wishes to make an appeal against the answer received from the Director-General, or if no reply has been received from the Director-General within two weeks of the date the letter was sent to him, the staff member may, within the two following weeks, submit his appeal in writing to the Chairman of the Appeals Committee through the Secretary of the Committee."

The Tribunal pointed out that under that provision the period within which an appeal must be submitted against any administrative decision affecting FAO's staff members began to run from the date of the notification of the decision to the persons concerned. The appointment of the complainant in 1952 under a one-year contract which made no provision for enrolment in the Joint Staff Pension Fund constituted a decision by the Director-General not to enrol him in the Fund. Although that decision had not been notified to the complainant, it had been confirmed and notified by the Director-General's informing the complainant that he would be enrolled in the Joint Staff Pension Fund only as from 1 February 1957. Finally, the complainant's claim had been rejected anew by the Secretary of the Pensions Committee on 13 February 1957.

The Tribunal accordingly found that, having regard to Staff Rule 303.131, the Organization was justified in contending that the complainant's right to appeal had lapsed and that the Director-General's decision to dismiss it was not tainted with illegality.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. ACCESS OF REPRESENTATIVES OF NON-GOVERNMENTAL ORGANIZATIONS TO MEETINGS HELD UNDER THE AUSPICES OF THE UNITED NATIONS [1]

Memorandum to the Chief, Non-Governmental Organizations Section, Economic and Social Council Secretariat

1. You have asked for our advice on a question concerning the access of representatives of non-governmental organizations to meetings held under the auspices of the United Nations.

2. As you are aware, this matter is taken care of in New York by Section 11 of the Headquarters Agreement between the United Nations and the United States.[2] This Section provides that "The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of... (4)[3] representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter and (5) other persons invited to the headquarters district by the United Nations or by [a] specialized agency on official business".

3. Headquarters Agreements for the regional economic commissions in Santiago, Bangkok[4] and Addis Ababa,[5] although not referring expressly to representatives of non-governmental organizations, contain a similar provision with respect, *inter alia*, to other persons invited to the Headquarters on official business. Also, while there is no similar provisions in the agreement with Switzerland,[6] as far as we are aware no problem has arisen with respect to access to meetings at the European Headquarters of the United Nations.

4. When meetings are held away from established Headquarters, it is the Secretary-General's policy to conclude a conference agreement with the host country which includes provision for access to the meeting by all persons entitled to attend. Whenever relevant, a provision concerning representatives of non-governmental organizations is included in the conference agreement.

24 March 1971

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[1] See also *Juridical Yearbook*, 1963, p. 167.

[2] United Nations, *Treaty Series*, vol. 11, p. 11.

[3] *Ibid.*, vol. 314, p. 49, article VI.

[4] *Ibid.*, vol. 260, p. 35, article VII.

[5] *Ibid.*, vol. 317, p. 101, article IV.

[6] *Ibid.*, vol. I, p. 163.

2. Question of the display of the United Nations flag on vessels engaged in FAO/UNDP projects [7]

Letter to the Legal Counsel, Food and Agriculture Organization of the United Nations

This is in reply to your letter of 3 December 1970, from which we note that it is FAO's standard practice to transfer temporarily to receiving Governments fishing vessels engaged in FAO/UNDP projects to ensure their registration under a national flag.

We agree that, in addition to the flag of registration, the United Nations flag may also be displayed on such vessels.

It seems to us that such a display of the United Nations flag is permissible under section 4 (3) of the United Nations Flag Code, which provides, among other matters, that the United Nations flag may be flown from "property occupied by any specialized agency of the United Nations".

As regards the manner of its display, we do not think it would be appropriate for the United Nations flag to be treated as a "house flag" which, as we understand it, is the flag of the steamship company operating a vessel. A "house flag" should be subordinate to the United Nations flag and to national flags.

Your letter appears to suggest that the vessels involved have two or more masts. On this assumption, and in light of the Flag Code and Regulations, we would recommend that the following procedure be observed:

— The United Nations flag should be flown from the top of the mainmast [We understand that the Red Cross flag is flown from the top of the mainmast on United States hospital ships.]

— If it is required by the country of registration that its flag be flown from the top of the mainmast, the United Nations flag should be flown from the top of the foremast; though it is our understanding that under general maritime practice the flag of registration is either flown from the gaff (a boom extending usually from the main mast) or from a flagstaff at the stern.

— If it is required when entering the territorial waters of a particular State (other than the State of registration) that the flag of that particular State be flown as a "courtesy flag" from the top of the mainmast, the United Nations flag should be flown from the top of the foremast.

In the case of a one-masted vessel, the United Nations flag should be flown from the top of the mast. However, problems may arise if it becomes necessary for the "courtesy flag" to be displayed from the top of the mast as well. If such a situation arises we would need to consider the matter further, taking into account the rigging of the particular vessel, and the feasibility of flying more than one flag from the mast top. It seems unlikely to us that the flag of registration would also need to be flown from the top of the mast; for, as mentioned above, we understand that it is usually flown either from a gaff extending from the mast or from a flagstaff at the stern.

A copy of the United Nations Flag Code and Regulations should be sent to the Project Manager of the UNDP project with the request that the flag should be displayed in accordance with the provisions of the Code and Regulations. The personnel aboard the vessels should be advised of the dignity to be accorded the flag, and the importance of their conducting themselves in a manner consistent with the vessel's display of the flag.

2 February 1971

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[7] See also *Juridical Yearbook*, 1963, p. 180.

3. LEGAL STATUS OF DISASTER RELIEF UNITS MADE AVAILABLE THROUGH THE UNITED NATIONS

Excerpt from a report of the Secretary-General[8]

A. *Status of unit in relation to the United Nations*

1. Where a disaster relief unit is "made available through the United Nations" the legal status of the unit in relation to the United Nations could either be that of a subsidiary organ of the United Nations or that of an entity separate in legal status from the United Nations.

1. *Subsidiary organ*

2. If the disaster relief unit is itself established by the United Nations, the unit would be a subsidiary organ of the United Nations. A disaster relief unit of this kind would be similar in legal status to, for example, the United Nations Force in Cyprus (UNFICYP) which was established by the Secretary-General pursuant to a recommendation of the Security Council. As was recommended by the Security Council, the composition and size of UNICYP were established by the Secretary-General in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland; the Commander of UNFICYP was appointed by the Secretary-General and reports to the Secretary-General.

2. *Entity separate in legal status*

3. A disaster relief unit established by an authority other than the United Nations would not be a subsidiary organ of the United Nations but an entity separate in legal status from the United Nations. Where the United Nations is itself to be associated in the provision, administration or co-ordination of the relief services, however, a contractual or even a less formal relationship might obtain between the United Nations and the authority which established the disaster relief unit.

4. An example of a disaster relief unit of this kind was the Technical Cadre Unit of the Swedish Stand-by force for United Nations Service which was established by the Government of Sweden and was made available recently through the United Nations for service in Peru under a Tripartite Agreement, dated 29 July 1970, between the United Nations and the Governments of Peru and Sweden. The Agreement recognized that the Unit was made available by Sweden at the request of Peru, made through the United Nations, and provided for substantial co-operation between the United Nations, the Government of Peru and the Government of Sweden. Under the Agreement the members of the Technical Cadre Unit were responsible for the performance of their functions solely to the Commander of the Unit, who was appointed by the Government of Sweden.[9]

5. Where on the other hand, a unit, though made available in response to General Assembly resolution 2435 (XXIII),[10] is in fact provided to the receiving country without United Nations involvement, the United Nations would not need to be party to the arrangements with the receiving country. For example, as was noted in the Secretary-General's interim report, dated 12 May 1970, on assistance in cases of natural disasters,[11] the Govern-

[8] Document E/4994, Annex III.

[9] See United Nations, *Treaty Series*, vol. 739 and *Juridical Yearbook*, 1970, p. 36.

[10] The General Assembly in paragraph 5 of resolution 2435 (XXIII) appealed to States Members of the United Nations and members of the specialized agencies to consider offering, through the United Nations or otherwise, emergency assistance to meet natural disasters, including stand-by disaster relief units or the earmarking of similar units for service in foreign countries.

[11] E/4853 and Corr.1, p. 32.

ment of Norway informed the Secretary-General in 1967, in response to the request contained in General Assembly resolution 2034 (XX),[12] that a Surgical Disaster Unit and a Field Hygiene Team had been established for the purpose of giving emergency assistance at the request of a State Member of the United Nations. Both personnel and equipment were organized for transport by air and could be made operative at short notice. Following the 1970 disaster in Peru, a Norwegian unit served in Peru, and the United Nations was not party to the arrangements established with respect to such unit. As was also noted in the Secretary-General's interim report, there have been other national units which have served in relief work abroad under bilateral arrangements with receiving countries.

B. *Use of United Nations flag*

6. The United Nations Flag Code and Regulations regulate the use of the United Nations flag. Use of the United Nations flag by a disaster relief unit which is a subsidiary organ of the United Nations would be clearly permissible under article 4 of the United Nations Flag Code. The relevant provisions of article 4 paragraphs 1 (*a*) and 2, read as follows:

> "4. (1) The flag shall be flown:
>
> "(*a*) From all buildings, offices and other property occupied by the United Nations,
>
> "...
>
> "(2) The flag shall be used by any unit acting on behalf of the United Nations such as any Committee or Commission or other entity established by the United Nations in such circumstances not covered in this Code as may become necessary in the interests of the United Nations.
>
> "...".

7. The use of the United Nations flag by a disaster relief unit which has a legal status separate from that of the United Nations would also be permissible under paragraph 2 of article 4, should the disaster relief unit be brought into such a relationship with the United Nations, for example, a contractual relationship, that the unit could be said to be "acting on behalf of the United Nations".

C. *Agreement with receiving country*

1. *Parties to agreement*

8. Where a disaster relief unit is made available through the United Nations an agreement with respect to the unit would need to be concluded with the receiving country. If the disaster relief unit is a subsidiary organ of the United Nations, the agreement would be entered into between the United Nations and the receiving country.

9. Where the disaster relief unit has a legal status separate from that of the United Nations, the question whether the United Nations should also be a party to the agreement with the receiving country would depend on the degree to which the United Nations would be associated in the relief services. As was noted above, an agreement was concluded between the United Nations, the Government of Peru and the Government of Sweden with respect to the Technical Cadre Unit of the Swedish Stand-by Force for United Nations Service which was made available through the United Nations for service in Peru.

2. *Provisions of agreement pertaining to status of the unit International status and purpose of unit*

10. An agreement with a country receiving a disaster relief unit would need to include provisions recognizing the international status and purpose of the unit; the authority

[12] The General Assembly in paragraph 2 of resolution 2034 (XX) requested Member States, when offering emergency assistance in cases of natural disaster, to inform the Secretary-General of the type of emergency assistance they are in a position to offer.

responsible for command of the unit; and the relationship which may exist between the unit and the United Nations.

11. The Agreement with Peru on the Swedish Technical Cadre Unit, for example, provided that the "Technical Cadre Unit of the Swedish Stand-by Force for United Nations Service" would "be made available through the intermediary of the United Nations for an initial period of up to six months, to aid in reconstruction of the areas devastated in Peru as a result of the earthquake of 31 May 1970", that the members of the Unit would be responsible for the performance of their functions solely to the Commander of the Unit, who would submit reports on the operations of the Unit to the Secretary-General, through his designated representative, and as appropriate to the Government of Peru and the Government of Sweden, and that the United Nations would bear no operational responsibility in connexion with the Unit.

Use of United Nations flag and identification marks

12. As already mentioned, the use of the United Nations flag by a disaster relief unit which is a subsidiary organ of the United Nations, and use of the United Nations flag by a disaster relief unit which, though not a subsidiary organ of the United Nations, could be said to be "acting on behalf of the United Nations" is permissible.

13. The Agreement with Peru with respect to the Swedish Technical Cadre Unit, which was not a subsidiary organ of the United Nations, provided for the display of the United Nations flag by the unit and for the use by the unit of United Nations identification marks:

> "*Article 5.* In recognition that it is acting on behalf of the United Nations, the Unit is authorized to fly the United Nations flag in accordance with the United Nations Flag Code and Regulations. The Unit may display the United Nations flag on its headquarters in Peru and otherwise as may be agreed by the Secretary-General's designated representative. In addition to the United Nations flag, the Unit may also display the flags of Sweden and of Peru. The Commander and members of the Unit may wear their national uniform. Suitable United Nations identification for the Commander and members of the Unit may be authorized by the Secretary-General's designated representative. The Commander and members of the Unit will conduct themselves at all times in a manner consistent with the purposes and principles of the United Nations and with their status under this agreement."

Relationships for co-ordination of functions

14. An agreement with a receiving country would also need to provide for the co-ordination of functions, first, as between the parties to the agreement; and secondly, as between the disaster relief unit and others engaged in the relief services.

15. The Agreement with Peru with respect to the Swedish Technical Cadre Unit provided for these matters as follows: Article 1 provided that the work of the Unit would be carried out together with other work being performed in accordance with decisions of competent United Nations organs and under the general plan of the Government of Peru. Article 2 provided that for the purposes of the agreement each of the parties would designate a representative authorized to act for it on all matters covered by the agreement; and that the assignments of the Unit would be determined by agreement between the representative of the Government of Peru and the representative of the Government of Sweden, with the assistance and advice of the representative of the Secretary-General. Article 3 provided for the submission of reports by the Commander of the Unit to the Secretary-General, through his designated representative, and as appropriate to the Government of Peru and the Government of Sweden. Article 7 provided that although the United Nations would bear no financial or operational responsibility in connexion with the Unit, the Secretary-General's

designated representative might provide good offices to the Governments with respect to any matter arising in connexion with the agreement.

Privileges and immunities

16. The Convention on the Privileges and Immunities of the United Nations, of 13 February 1946, provides for the grant of privileges and immunities to the United Nations, to representatives of United Nations Member States, to officials of the United Nations, and to experts on missions for the United Nations. (The provisions pertaining to representatives of Member States are not of immediate relevance.)

17. Where the receiving country is party to the Convention, the Convention would be applicable in the case of a disaster relief unit as follows:

(*a*) The provisions of articles I, II and III of the Convention on the Privileges and Immunities of the United Nations would be applicable, automatically, to the disaster relief unit where the status of the unit is that of a subsidiary organ of the United Nations. The provisons would not apply to a unit which has a legal status separate from that of the United Nations.

[Article I of the Convention concerns the juridical personality of the United Nations, and recognizes the capacity of the United Nations to contract; to acquire and dispose of property; and to institute legal proceedings. Article II provides for, among other matters, the immunity of the United Nations, its property and assets from legal process, except when immunity is expressly waived by the United Nations; the inviolability of the premises of the United Nations, and the immunity of its property and assets from search and any other form of interference; the immunity of the United Nations from currency controls; its immunity from all direct taxes; and its exemption from customs duties, prohibitions and restrictions with respect to articles imported or exported for official use. Article II also provides for the remission or return, whenever possible, of the amount of duty or tax forming part of the price to be paid on important purchases by the United Nations. Article III deals with the privileges and immunities of the United Nations with respect to communications facilities.]

The provisions of article V and of sections 24 and 25 of article VII of the Convention would apply, automatically, irrespective of whether the disaster relief unit is a subsidiary organ of the United Nations, to officials of the United Nations assigned by the United Nations to work with the unit.

[Article V of the Convention provides for, among other matters, the immunity of United Nations officials from legal process with respect to official acts; their exemption from taxation on salaries and emoluments paid by the United Nations; their immunity from immigration restrictions and alien registration; and their privileges with respect to exchange facilities, repatriation facilities in time of international crisis, and importation of furniture and effects. Article V provides for the waiver by the Secretary-General of the immunity of an official where the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations; and requires that the United Nations co-operate with the authorities of Member States to facilitate the proper administration of justice.

[Sections 24 and 25, article VII, provide for the issuance by the United Nations to its officials of United Nations laissez-passer to be accepted as valid travel documents by the authorities of Members States, and for the grant to holders of United Nations laissez-passer of facilities for speedy travel.]

(*c*) The provisions of article VI of the Convention would apply, automatically, irrespective of whether the disaster relief unit is a subsidiary organ of the United Nations, to

those persons serving with the unit who could be regarded as "experts on missions for the United Nations".

[Article VI of the Convention provides, among other matters, that experts (other than officials within the scope of Article V of the Convention) on missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. The article provides, in particular, for their immunity from personal arrest or detention and from seizure of baggage; their immunity from legal process with respect to acts done in the course of the performance of their mission; inviolability for all papers and documents; facilities with respect to currency or exchange restrictions; and immunities and facilities with respect to personal baggage. Article VI also makes provision for waiver by the Secretary-General of the immunity of an expert where the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.]

(*d*) The provisions of section 26 of article VII would apply, automatically, irrespective of whether the disaster relief unit is a subsidiary organ of the United Nations, to members of the unit who, though not holders of United Nations laissez-passer, could be said to be travelling on the business of the United Nations and hold a certificate issued by the United Nations to that effect.

[Section 26 of article VII states that facilities similar to those specified in section 25 shall be accorded experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate stating that they are travelling on the business of the United Nations. Section 25 provides for the grant of facilities for speedy travel to holders of United Nations laissez-passer.]

18. Where provisions of the Convention on the Privileges and Immunities of the United Nations do not apply (where, for instance, the receiving country is not party to the Convention or where, though it is party to the Convention, the disaster relief unit has a separate legal status from the United Nations and it cannot be said that the members of the unit are experts on missions for the United Nations), it would, nevertheless, be open to the receiving country to provide, for example (by specific provision to that effect in the agreement to be concluded with respect to the disaster relief unit), for the grant to the disaster relief unit and its members of privileges and immunities similar to those accorded in the Convention.

19. In the case of the Swedish Technical Cadre Unit (not a subsidiary organ of the United Nations) which served in Peru, the provisions of the Agreement with the Government of Peru (a party to the Convention on the Privileges and Immunities of the United Nations) provided for the grant of privileges and immunities to the Unit and its members. The Government agreed to assure to the Unit, its Commander and its members the conditions necessary to facilitate the performance of the functions of the Unit; to extend to the Unit the provisions of articles I, II and III of the Convention on the Privileges and Immunities of the United Nations; and to extend the provisions of article VI and section 26 of article VII of the Convention to the Commander and the members of the Unit.

3. *Other provisions of agreement*

20. An agreement with a country receiving a disaster relief unit would also need to provide, among other matters, for such questions as the particular area to which the unit is to be assigned; the particular duties to be assigned to the unit; and responsibility for costs.

21. The Agreement with the Government of Peru with respect to the Swedish Technical Cadre Unit left the question of assigned area and the question of duties to be determined by designated representatives of the Government of Peru and the Government of Sweden,

assisted by the representative of the Secretary-General. As regards responsibility for costs, the Agreement provided that the Government of Sweden would bear all costs directly pertaining to the Unit, and that the Government of Peru would bear the cost of material and of local labour. The United Nations bore no financial responsibility.

D. *Conclusions*

22. Accordingly, the formulation of certain conclusions with respect to the status of disaster relief units made available through the United Nations would now appear possible, particularly in the light of the arrangements established for the provision of the Swedish Technical Cadre Unit for services in Peru. These conclusions may be summarized as follows:

(*a*) A disaster relief unit made available through the United Nations would, depending on whether the unit is established by the United Nations or by an authority other than the United Nations, either be a subsidiary organ of the United Nations or have a legal status separate from that of the United Nations;

(*b*) The United Nations can co-operate, to a substantial degree, even in a case where a disaster relief unit has a legal status separate from that of the United Nations;

(*c*) The use of the United Nations flag by a disaster relief unit is permissible where the unit is a subsidiary organ of the United Nations; and also where the unit, though having a legal status separate from the United Nations, can in the circumstances of the case be said to be acting on behalf of the United Nations;

(*d*) An agreement needs to be concluded with the country receiving a disaster relief unit. Where the unit is a subsidiary organ of the United Nations, the agreement would be concluded between the United Nations and the Government of the receiving country. Where the unit has a legal status separate from that of the United Nations, the United Nations, if it is to be associated in the provision, administration or co-ordination of the relief services, may also be party to the agreement;

(*e*) The agreement needs to provide, among other matters, for the co-ordination of the work of the disaster relief unit with the work of other bodies engaged in the relief services; for the privileges, immunities and facilities to be accorded the disaster relief unit in the receiving country; and for the manner in which responsibility for costs is to be borne;

(*f*) As regards privileges and immunities, though provisions of the Convention on the Privileges and Immunities of the United Nations may not be applicable in a given case, it is open to the receiving country to agree to accord to the disaster relief unit and its members privileges and immunities similar to those provided for in the Convention.

23. The question of what might be done by the United Nations to facilitate the speedy conclusion of an agreement with a receiving country establishing the conditions under which a disaster relief unit would be made available is perhaps an aspect to which the Economic and Social Council and the General Assembly may wish to give some consideration, when examining the role of the United Nations in the provision of disaster relief units through the United Nations.

24. While it is clear that such conditions are matters for negotiation and agreement between the parties concerned, it may be considered whether, for the purpose of facilitating and expediting the conclusion of disaster relief units agreements, it would not be initially desirable for certain guidelines to be established for the conclusion of agreements of this kind. The guidelines may, for example, enumerate the elements it would appear desirable to include in a disaster relief unit agreement, and perhaps also propose principles in the light of which parties may make provision for such matters in their agreement. It may be of

assistance in this connexion for consideration to be given among other matters, to the provisions of the Agreement of 29 July 1970 between the United Nations, the Government of Peru and the Government of Sweden concerning the Swedish Technical Cadre Unit which served in Peru; as well as to other agreements of the United Nations under which services are rendered by international personnel within the territory of a State, such as the agreements concluded in connexion with United Nations programmes of technical assistance, assistance under the Special Fund sector of the United Nations Development Programme, assistance under the World Food Programme and in the field of peace-keeping.

13 May 1971

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4. Question of credentials and letters of appointment of observer delegations of States to United Nations organs and conferences convened under the auspices of the United Nations

Internal memorandum

1. You have asked for information concerning the question of credentials and letters of appointment of observer delegations of States to United Nations organs and conferences convened under the auspices of the United Nations.

I. *Conferences*

2. In the case of conferences, the general principle would appear to be that States invited to conferences who do not wish to attend as participants may attend officially as observers, and participate in the discussions whether or not the rules of procedure contain a provision to that effect. With respect to such observers, letters of appointment should in principle be issued. As to the authorities entitled to issue such letters of appointment, they would include, in addition to the authorities entitled to issue credentials, the permanent representative to the United Nations and possibly the ambassador at the seat of the conference. As a rule, States not invited to a conference, have no official observer status. Their representatives however might be accorded distinguished visitor treatment; in such case they would not be required to present credentials or letters of appointment.

3. The rules for the calling of international conferences of States by the Economic and Social Council are contained in General Assembly resolution 366 (IV). Rule 3 provides *inter alia* (1) that the Council shall decide what States shall be invited (2) that the Secretary-General shall send out the invitations and shall give notice to every Member of the United Nations not invited and (3) that such Member may send observers to the conference. The resolution contains no provisions on credentials or letters of appointment for either participants or observers. The rules of procedure of some conferences convened by the Economic and Social Council for example rule 59 of the rules of procedure of the Conference for the Adoption of a Single Convention on Narcotic Drugs and rule 62 of the rules of procedure of the Conference for the Adoption of a Protocol on Psychotropic substances provide that "A State which has been invited to the conference but which is not participating in it by an accredited representative may appoint an observer to it. The name of the observer shall be communicated without delay to the Executive Secretary, if possible not later than twenty-four hours after the opening of the Conference."

4. In practice, there has been several instances where States invited to a conference convened by the General Assembly or the Economic and Social Council have appointed observers to the conference, their representatives being in such case mentioned as observers

in the list of representatives or the Final Act. As far as credentials or letters of appointment are concerned however, the practice is somewhat erratic.

II. *Organs*

A. *Security Council*

5. Rule 14 of the provisional rules of procedure of the Security Council provides that "Any Member of the United Nations not a member of the Security Council and any State not a Member of the United Nations, if invited to participate in a meeting or meetings of the Security Council, shall submit credentials for the representative appointed by it for this purpose. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is invited to attend."

6. The practice with respect to credentials has not been uniform: in some cases (see for example document S/9519) the request to participate came from the Foreign Minister and stated that the representative appointed to represent his government was "accredited" in that capacity; in other instances, (see document S/10204 and 10207) the letter conveying the composition of the delegation was merely a letter of request to participate sent by the permanent representative.

B. *General Assembly*

7. The debates of the General Assembly and its Committees and subsidiary organs are normally not attended by observers and there is no rule of procedure on the matter. There has however been instances where non-member States have been invited to participate in the work of Main Committees: the Republic of Korea for example has been invited on a number of occasions to attend the debate in the First Committee and the composition of its delegation has in each case been indicated in a letter signed by the Foreign Minister.

8. The General Assembly has rarely authorized observers of States to participate in its subsidiary organs. One such authorization was given in the case of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction: by resolution 2750 C(XXV) of 17 December 1970 the Assembly decided to invite other Member States not appointed to the Committee to participate as observers and to be heard on specific points. This decision was in continuation of a decision included in the report of the First Committee on the item at the twenty-third session that "any Member State wishing to follow the work of the Sea-Bed Committee shall be entitled to accredited observer status".[13]

9. Similarly in the case of the Preparatory Committee for the United Nations Conference on Human Environment, the Assembly decided on 15 December 1969 that interested Member States not appointed to the Committee might designate representatives as accredited observers.

10. In both instances, the States concerned have submitted for their observers letters of appointment similar to those sent for representatives of members and usually signed by permanent representatives.

C. *Economic and Social Council*

11. The rules of procedure of the Council do not deal with the question of how representatives of States not members of the Council but participating in its work under Article 69 of the Charter and rules 75 and 76 of the rules of procedure are to show that they are so

[13] *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 26, document A/7477, para. 19.

empowered. In recent years the practice normally followed is for the permanent mission in New York or, as the case may be, in Geneva to send a letter or note verbale indicating the names of the persons who will represent the State concerned. The term "accredit" is rarely used. In these communications and in the official records of the Council, such persons are normally called observers although neither Article 69 of the Charter nor rules 75 and 76 of the rules of procedure of the Council use this word. The request submitted under rule 19 of the rules of procedure do not deal with communications by which observers are appointed.

16 June 1971

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5. Question whether meetings of a committee or sub-committee of the General Assembly with limited membership may be closed to Member States not members of the committee or sub-committee—Rule 62 of the rules of procedure of the General Assembly

Note prepared at the request of a Working Group of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly

A legal opinion has been requested on the legality of having meetings of committees and sub-committees of the General Assembly closed to some Member States. The Office of Legal Affairs has also been asked to examine the drafting history of rule 62 of the rules of procedure of the General Assembly in order to ascertain the intention of the General Assembly in providing for private meetings.

At the outset, we should like to stress that as all Members of the United Nations are, under Article 9 of the Charter, members of the General Assembly and, under rule 102 of the rules of procedure, members of the Main Committees there can be no question of a meeting of the General Assembly itself or of a Main Committee from which a Member of the United Nations could be excluded. Participation on the basis of equality in all plenary meetings of the General Assembly, in all meetings of the Main Committees and in all meetings of other bodies whose membership includes all Members of the United Nations is one of the rights and privileges of membership which, subject, of course, to the provisions of Articles 5 and 19 of the Charter, cannot be curtailed.

The present question therefore relates solely to meetings of committees and sub-committees of limited membership.

Turning first to the drafting history and application of rule 62, it may be noted that the essential provisions of the rule were contained in the original draft rules of procedure prepared by the Executive Committee of the Preparatory Commission of the United Nations which were recommended by the Preparatory Commission for adoption as provisional rules of the General Assembly.[14] The text has remained unchanged except for a consequential change in the second sentence which was made at the second session of the Assembly when the provisional rules were reviewed. Originally this second sentence had read, "Meetings of other committees and *subsidiary organs* shall also be held in public unless the bodies concerned decides otherwise" (emphasis supplied). At the second session it was decided to deal with subsidiary organs separately in a special rule (now rule 162). The term "subsidiary organs" in rule 62 was changed to "sub-committees" as it is in the present text.[15] So far

[14] Document PC/EX/A/52/Part II, rule 71.

[15] See document A/C.6/182, p. 26.

as we have thus far been able to ascertain, there was no discussion of the meaning of the words "public" and "private" either at the time of the adoption of the provisional rules or at the time that the alteration of the text was made at the second session.

However, rules of procedure of principal organs of limited membership adopted at approximately the same time also contained provisions referring to private meetings in which the meaning is unmistakable. In particular we would refer to Chapter IX of the provisional rules of procedure of the Security Council in which it is expressly provided that the Security Council shall decide whether its confidential records may be made available to other Members of the United Nations.

While the drafting history gives us little help, practice which the International Court of Justice in its latest advisory opinion has again affirmed as an appropriate method of interpretation, would seem decisive in indicating that it was the intention that organs and committees of limited membership when meeting in private could exclude representatives and members of the United Nations who were not members of the organs concerned. The normal practice, consistently followed from 1946 to the present, has been that when a committee decides to meet in private only members of the Committee and essential Secretariat members are admitted. However, the Committee, as in the case of the Rationalization Committee itself, may decide to close the meeting only to the press and the public and to allow representatives of other Member States to attend.

Turning now to the constitutional issue, it is the opinion of the Office of Legal Affairs that there is nothing in the Charter which prevents the General Assembly from authorizing committees and sub-committees of limited membership to hold meetings in private from which representatives of other members of the United Nations are excluded. Such procedure, which has the support of twenty-five years of practice, does not violate the principle of sovereign equality. This principle assures to each Member of the United Nations that it be considered eligible for appointment to such committees. But a committee of limited membership necessarily requires some difference of status so far as the work of that particular committee is concerned. A member of a committee has all rights of participation including the right to vote. Accredited observers, if authorized by the General Assembly, may be given the right to participate in the discussions, or even to submit proposals but do not have the right to vote. When there is no provision for accredited observers, a Member of the United Nations present in the meeting room does not have the right to speak unless expressly invited by the committee to make a statement. The closing of a meeting of a committee of limited membership to non-members of the committee is therefore only one of many differences and can no more be considered a violation of the principle of sovereign equality than the establishment of organs of limited membership. With respect to such organs there are Charter provisions (Articles 32 and 69) providing for a right for the Members of the United Nations to participate in the meetings of the Security Council and the Economic and Social Council on matters specifically provided for in those articles. But these provisions do not preclude the holding of closed meetings.

In conclusion, it would appear to the Office of Legal Affairs that under rule 62 of the rules of procedure of the General Assembly and in accordance with 25 years of consistent practice, committees and sub-committees of limited membership may be closed to all but members of the committee and essential Secretariat members, and that there is no provision of the Charter in conflict with these rules and practices of the Assembly. Experience over the past 25 years would, it is believed, demonstrate that in exceptional circumstances the holding of such private meetings is essential for the performance of the functions of the committees concerned.

8 July 1971

6. Request by the Council of the European Economic Community to be invited to attend the deliberations of the Second Committee of the General Assembly with observer status

Memorandum to the Secretary of the Second Committee

1. The Deputy Permanent Representative of a Member State to the United Nations, as representative of the country currently retaining the Presidency of the Council of the European Economic Community, has written on 20 October 1971 to the Chairman of the Second Committee of the General Assembly concerning a request by the Council to be invited to attend sessions of the Second Committee as an observer. After setting out considerations on which the request is based, the author of the letter asks advice on the procedure under which the Community's request could be examined by the Second Committee and obtain favourable consideration. The Chairman of the Second Committee has requested an opinion from the Legal Counsel on this request.

2. Before examining the particular request from the European Economic Community it will be useful to briefly review the practice of the General Assembly. Neither the Articles of the Charter of the United Nations nor the rules of procedure of the General Assembly contain any provision dealing with the participation of organizations such as the Community in the Assembly or its Main Committees. There are, however, three forms of participation of intergovernmental organizations which have been established.

3. The first is the participation provided in the Relationship Agreements approved by the General Assembly and concluded with the specialized agencies and the International Atomic Energy Agency.

4. Secondly, certain regional intergovernmental organizations have been accorded permanent observer status by resolutions of the General Assembly (the Organization of American States by resolution 253(III) of 16 October 1948, the League of Arab States by resolution 477(V) of 1 November 1950 and the Organization of African Unity by resolution 2011(XX) of 11 October 1965).

5. Thirdly, it has been recognized by practice that a Main Committee of the General Assembly may invite representatives of intergovernmental organizations to make statements to the Committee on a specific item with respect to which the Committee considers such statements would be useful to its work.

6. From the letter referred to in paragraph 1 above it is understood that the Community is requesting an invitation to attend sessions of the Second Committee as an observer. The Community would wish, on a practical level, that the invitation "should enable its spokesman to occasionally participate in the debate concerning items on which, as required by the Treaty of Rome,[16] it must take a Community position". The Community also wishes that "the invitation should apply to future sessions". It would appear, therefore, that the request is for a standing invitation to participate as an observer in the deliberations of a Main Committee of the General Assembly on any item on which the Community, in accordance with the Treaty of Rome, must take a position, and that the invitation should apply to future sessions as well as to the present session of the General Assembly.

7. An invitation for permanent observer status could clearly be extended to the European Economic Community by resolution of the General Assembly, as was done in the case of the OAS, the Arab League and the OAU. On the other hand, an invitation of the kind described in the previous paragraph goes well beyond existing precedents for decision

[16] United Nations, *Treaty Series*, vol. 294, p. 3.

by the Committee itself. The request if granted would mean that on each item it would be the Community, and not the Committee, which would decide whether the Community should participate in the discussion. Moreover, the request is not only for the present but also for future sessions, and even if granted only for the present session would create a precedent which could hardly be reversed at subsequent sessions. Such invitation would be scarcely distinguishable from full observer status which has only been accorded by action of the General Assembly itself. It is, therefore, the view of the Office of Legal Affairs that the present request, going beyond existing practice, would require General Assembly action. An authorization of this generality is not within the competence of the Committee.

8. It should also be noted that in at least one important aspect the present request differs significantly from other invitations given by the General Assembly to intergovernmental organizations. As the letter points out, under the Treaty of Rome, the European Economic Community has special powers and responsibilities in international economic relations. It is understood that in some instances the Community would be speaking on behalf of, or in place of, its members who are Member States of the United Nations. Thus a decision on the Community's request has important substantive aspects involving not only the Treaty of Rome but the Charter of the United Nations as well. Decisions of this importance should be passed on by the General Assembly and not finally decided at the level of a Main Committee.

9. On the other hand, if the Community does not wish action through a General Assembly resolution, its wishes on the practical level could be met through separate requests to the Committee with respect to each item on which it felt that it had a special interest, including of course those on which, in accordance with the Treaty of Rome, it considered that "it must take a Community position". The Committee could, within existing precedents, decide in each case to invite a representative of the Community to make a statement on the specific item if it considered that the item was of particular concern to the Community and that such statement would be useful to the Committee's work.

10. Before concluding, it may be noted that in the cases recalled by the author of the letter in which the Community has participated as an observer, namely, in the Economic and Social Council, UNCTAD and the Preparatory Committee for the United Nations Second Development Decade, this has been done on the basis of General Assembly or Economic and Social Council resolutions referring to intergovernmental bodies or organizations. Thus in the case of UNCTAD, the General Assembly in resolution 1995(XIX) of 30 December 1964 authorized the Trade and Development Board to make arrangements for representatives of intergovernmental bodies whose activities are relevant to its functions to participate without vote in its deliberations and in those of its subsidiary bodies. Pursuant to this resolution the rules of procedure of UNCTAD organs provide for the participation of intergovernmental bodies, and it is under these rules that the Community participates in the work of UNCTAD. In the case of the Economic and Social Council the question of participation has a long history. One need, however, cite, for example, only Council resolution 1267 B (XLIII) of 3 August 1967 by which the Council invited the Secretary-General, "where he considers it would help to further the aims and work of the Council, to propose to the Council the names of intergovernmental organizations outside the United Nations sytem that should be represented by observers at sessions of the Council". Finally, General Assembly resolution 2411 (XXIII) of 17 December 1968 on international development strategy welcomed the contribution which various intergovernmental organizations not within the United Nations system can bring to the preparation of the Second United Nations Development Decade.

11. In the light of the foregoing, the European Economic Community may be advised: (1) that the General Assembly, through the adoption of a resolution in plenary, could accord

observer status to the Community or could authorize some form of general participation in the deliberations of the Committee, (2) alternatively the Committee itself could, in response to separate requests from the Community with respect to each item on which it feels it has a special interest, decide to invite a representative of the Community to make a statement on that specific item if the Committee considered that the item was of particular concern to the Community and that such statement would be useful to the Committee's work.

15 November 1971

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7. MEANING OF THE SENTENCE "CHAIRMEN OF OTHER COMMITTEES UPON WHICH ALL MEMBERS HAVE THE RIGHT TO BE REPRESENTED AND WHICH ARE ESTABLISHED BY THE GENERAL ASSEMBLY TO MEET DURING THE SESSION SHALL BE ENTITLED TO ATTEND MEETINGS OF THE GENERAL COMMITTEE AND MAY PARTICIPATE WITHOUT VOTE IN THE DISCUSSIONS" IN RULE 38 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Note prepared by the Secretary-General in accordance with a request made by the Chairman of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly at the 16th meeting of the Committee, on 21 May 1971[17]

1. At its third session in 1948 the General Assembly established an *Ad Hoc* Political Committee composed of all Members of the Assembly to consider and report on a number of agenda items. Although, according to the then existing rule, the General Committee comprised the President of the Assembly, the seven Vice-Presidents and the Chairmen of the six Main Committees, the Chairman of the *Ad Hoc* Political Committee actually took part in the General Committee without the right to vote.

2. The Special Committee on Methods and Procedures of the General Assembly established on 20 April 1949, in examining the rules of procedure of the Assembly, took into consideration the above-mentioned situation and decided to recommend a rule on "participation of Chairmen of *ad hoc* committees". In its report to the Assembly, the Special Committee stated:

> "During the third session of the General Assembly, the Chairman of the *Ad Hoc* Political Committee took part, without the right to vote, in the meetings of the General Committee. It is the opinion of the Special Committee that this is a desirable practice which should be confirmed in the rules of procedure. Accordingly the Special Committee recommends the addition of a new rule 34 (*a*) worded as follows:
>
> "*Rule 34* (a)
>
> "*Participation of Chairmen of* ad hoc *committees*
>
> "Chairmen of committees upon which all Members have the right to be represented, and which are established by the General Assembly to meet during the session, shall beentitled to attend meetings of the General Committee and may participate without vote in the discussions." [18]

3. When the report of the Special Committee was considered by the Sixth Committee at the fourth session of the General Assembly, the Chairman of the Special Committee explained that in recommending the addition of the new rule, the Special Committee "had wished to confirm a practice followed at the previous session of the General Assembly".[19]

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[17] Circulated as document A/AC.149/R.8.

[18] *Official Records of the General Assembly, Fourth Session, Supplement No. 12* (A/937), para. 19.

[19] *Ibid., Sixth Committee*, 146th meeting, para. 25.

4. On the recommendation of the Sixth Committee, the General Assembly adopted the new provision which became the last sentence of rule 38.[20]

5. The history of the said provision indicates that the expression "committees upon which all Members have the right to be represented" was meant to be *ad hoc* committees of the whole established by the Assembly to meet during the session.

24 May 1971

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8. Voting requirements in Main Committees of the General Assembly on proposals to amend the Charter

Note prepared at the request of the Secretary of the Second Committee

1. You have requested an opinion concerning the voting requirements in Main Committees of the General Assembly on proposals to amend the Charter.

2. We would like to point out first that when previous amendments to the Charter were considered by Main Committees (namely by the Special Political Committee at the eighteenth session and by the Sixth Committee at the twentieth session) no question concerning any special voting requirements was raised.[21]

3. While Article 108 of the United Nations Charter lays down special voting requirements for the adoption of amendments to the Charter, namely two-thirds of the members of the General Assembly, this requirement applies only to a vote in plenary where the amendments are adopted. The Main Committee's action is a recommendation to the General Assembly and is governed, as all decisions of Committees of the General Assembly (except on a question of reconsideration) by rules 126 and 127 of the rules of procedure of the Assembly in accordance with which decisions in the Committees of the General Assembly are made by a majority of the members present and voting.

4. In this connexion mention should be made of another Charter requirement concerning voting majorities, namely the provision in Article 18, paragraph 2, that decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. It is to be noted that that requirement has always been applied only to the decisions of the General Assembly itself taken in plenary and not to decisions of Committees.

9 December 1971

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9. Question whether rule 124 of the rules of procedure of the General Assembly is applicable when a motion for deletion relating to a part of a proposal is submitted after an amendment for deletion of that same part has been rejected

Note addressed to the Secretary of the Second Committee

1. You asked us the following question: is rule 124 of the rules of procedure of the General Assembly concerning the reconsideration of proposals applicable when, after the

[20] General Assembly resolution 362(IV), Annex I, revised rule 33.

[21] Actually, the two draft resolutions recommending the adoption of amendments to Articles 23, 27 and 61 were respectively adopted in the Special Political Committee by 96 votes to 11 with 4 abstentions and by 95 votes to 11 with 4 abstentions and the draft resolution recommending the adoption of an amendment to Article 109 was adopted unanimously by the Sixth Committee (See *Official Records of the General Assembly, Eighteenth Session, Special Political Committee*, 429th meeting, paras. 47 and 48 and *Ibid., Twentieth Session, Sixth Committee*, 897th meeting, para. 23).

rejection of an amendment proposing the deletion of a paragraph in a draft resolution, a motion for division concerning the same paragraph is submitted? In our view, the answer is in the negative. Rejection of an amendment proposing the deletion of a paragraph is not the same as adoption of the paragraph: the considerations which guide a delegation when it votes on a proposal for deletion may be very different from those which motivate it when it expresses its opinion on a paragraph voted on separately.

2. In addition, if we admit that rule 124—and therefore also rule 83 which is the symmetrical provision for plenary meetings—is applicable in the situation under consideration, illogicalities may result. The following example demonstrates this particularly clearly: if in the General Assembly a draft resolution on an important question within the meaning of rule 85 is the subject of an amendment proposing the deletion of one paragraph and if that amendment does not obtain at least two thirds of the votes, the amendment is rejected. Thus 34 per cent of the Members present and voting suffices to defeat the amendment. If we admit that a motion for division concerning the same paragraph, submitted after the rejection of the amendment, falls within the scope of rule 83 concerning the reconsideration of proposals, the same 34 per cent would be allowed to prevent the motion for division from being put to a vote, the result being that a paragraph opposed by 66 per cent of the Members present and voting would be retained in the draft resolution. The application of rule 83 in such a situation would therefore be unjustifiable; in any case, the provisions of rule 91 which enable the majority to prevent a separate vote provide sufficient protection against the efforts of a minority to deprive a proposal of its substance.

3. While the effect in committees is not so great as in the General Assembly, there is still a slight difference in the voting requirements, and the considerations which delegations may take into account may be different. In any case, the considerations of principle advanced in paragraph 1 above are equally valid for rule 83 and rule 124 and, in addition, it would be illogical to interpret differently two symmetrical provisions.

8 December 1971

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10. Question whether there is any legal objection to the proposal that the Preparatory Committee for the United Nations Conference on the Human Environment establish a sub-committee to consider or prepare drafts of international legal instruments

Memorandum to the Secretary-General, United Nations Conference on the Human Environment

1. You have asked whether there is any legal objection to the proposal that the Preparatory Committee for the United Nations Conference on the Human Environment establish a sub-committee or working group to consider and/or prepare a draft or drafts of specific international legal instruments, including conventions and agreements, for possible adoption by the Stockholm Conference and signature by the States represented at that Conference.

2. The Preparatory Committee at its first session decided: "on the basis of rule 162 of the rules of procedure of the General Assembly, to be guided in the conduct of its business by the general principle that the rules of procedure of the General Assembly should apply to the Committee in so far as they were appropriate for the performance of its functions". (See A/CONF.48/PC/6, para. 6, of which the General Assembly took note in resolution 2657 (XXV) of 7 December 1970.)

Rule 162 of the rules of procedure of the General Assembly provides:

> "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions. The rules relating to the procedure of committees of the General Assembly ..., shall apply to the procedure of any subsidiary organ, unless the General Assembly or the subsidiary organ decides otherwise."

The rules relating to the procedure of committees of the General Assembly include rule 104 which provides:

> "Each Committee may set up sub-committees, which shall elect their own officers."

3. As appears from the preceding paragraph, the Preparatory Committee is a subsidiary organ of the General Assembly. Many subsidiary organs of the General Assembly have themselves established subsidiary organs to assist them in their work.[22] That method was followed for example by the Preparatory Committee for the Twenty-fifth Anniversary of the United Nations and by the Preparatory Committee for the Second United Nations Development Decade which both prepared declarations adopted by the General Assembly at its commemorative session on 24 October 1970. Similarly the United Nations Scientific Advisory Committee which advised on the preparations for the 1963 United Nations Conference on Science and Technology for the Benefit of the Less Developed Areas was assisted, in working out the details of the preparatory work by a Scientific Advisory Panel consisting of twelve members, seven of which served as alternates for members of the Scientific and Advisory Committe while five were nominated from countries selected in such a way as to ensure a wider geographical distribution.[23] Having regard to rule 104, the General Assembly has not considered it necessary, in most instances, to confer express authority for this purpose upon its subsidiary organs. The absence of such express authorization in the resolution establishing the Preparatory Committee should not, therefore, be considered as constituting a legal bar to the subject proposal.

4. Assuming that the working group is to be established from among the Preparatory Committee's membership, it would seem advisable, in order to enhance conditions conducive to reaching agreement on conrete issues, that the group be kept relatively small (15 at most) and be composed of Government experts competent in the field. The group should be geographically balanced as a whole. Furthermore, in view of the obvious interest of a number of specialized agencies in the working group's discussions, experts designated by the agencies most directly concerned should also participate in the group. It might be preferable if discussions were conducted in closed sessions.

5. In the performance of its functions, the subsidiary organ remains under the authority of the body which established it. It receives instructions from that body should report back to it rather than communicate directly with other organs except as authorized by the parent body. Furthermore, the subsidiary organ can only discharge such functions (or part of them, as directed) as have been entrusted to the parent body itself. Since the Preparatory Committee's function is to advise the Secretary-General in the preparations for the Stockholm Conference, any working group established by it would also be assisting the Secretary-General, for example, in the preparation of a particular topic which the Preparatory Committee has approved for inclusion in the Conference agenda. The Preparatory Committee could further specify that for this purpose the working group may meet between sessions of the Committee to continue its work, as necessary.

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[22] For an extensive listing of precedents, see *Repertory of Practice of United Nations organs* and Supplements Nos. 1 and 2, under Article 22.

[23] *Official Records of the Economic and Social Council, Thirty-sixth Session, Annexes*, agenda item 15, document E/3772, para. 8.

6. Apart from the establishment of a working group, other methods have been used for the preparation of first drafts of conventions and agreements to be submitted ultimately to the General Assembly or a plenipotentiary conference:

— A government (or group of governments) has occasionally been asked, or has taken the initiative, to propose a draft treaty text which usually was then referred to some *ad hoc* committee or similar body for further consideration and review prior to being submitted to the competent United Nations organ (or referred by the latter to a plenipotentiary conference) for final consideration and adoption. For example, the Treaty banning nuclear tests in the atmosphere, in outer space and under water and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Sub-soil thereof were joint United States/USSR initiatives channelled through the Conference of the Eighteen-Nation Committee on Disarmament.

— The United Nations Secretariat (the Office of Legal Affairs in co-operation with other interested departments) has prepared the first drafts of a number of protocols adopted by the General Assembly between 1946 and 1953, amending certain conventions concluded during the League of Nations period (on narcotic drugs, the suppression of the white slave traffic, the suppression of the circulation of obscene publications, etc.).

— The secretariats of specialized agencies have prepared drafts for a number of international conventions and agreements in their respective fields; to take a recent example the FAO secretariat has prepared the Constitution of the West Africa Rice Development Association which was adopted in 1970 by a Conference of Plenipotentiaries.

— Other intergovernmental organizations or even non-governmental organizations with special competence in particular fields have proposed draft conventions which eventually were signed and entered into force: the 1949 Geneva Conventions on the protection of victims of war for example were based on proposals of the International Red Cross.

Quite often when the subject matter of the proposed regulation was highly technical, the comptetent secretariats have been relied upon to produce drafts, while when the subject matter was predominantly political in nature or humanitarian, governments have taken the initiative. But even at the "second stage" of the drafting process (the "*ad hoc* committee" stage in which governments invariably participate and which precedes the referral of the draft to the General Assembly or other competent organ) co-operation with the competent secretariats has usually continued.

4 February 1971

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11. Question whether a Member State of the United Nations not a member of the Economic and Social Council which has been invited under Article 69 of the Charter and rule 75 of the rules of procedure of the Council to participate in the deliberations of the Council on a matter of particular concern to that Member may be a co-sponsor of a draft resolution submitted on the matter

Statement made by the Director of the General Legal Division at the 1750th meeting of the Economic and Social Council on 5 May 1971

The Director of the General Legal Division, speaking on behalf of the Legal Counsel, said that the question had been raised whether a Member State of the United Nations which was not a member of the Economic and Social Council and which had been invited under

Article 69 of the Charter and rule 75 of the rules of procedure of the Council to participate in the deliberations of the Council on a matter of particular concern to that Member, could be one of the sponsors of a draft resolution submitted on the matter.

Article 69 of the Charter did not define the meaning of participation, except to provide that the non-member of the Council was not entitled to vote. Rule 75, however, provided, *inter alia*, that any Member thus invited might submit proposals which might be put to the vote by request of any member of the Council. The word "proposal" in that rule covered draft resolutions and substantive amendments or motions, as rules 56 and 57 of the rules of procedure indicated; in the rules of procedure of the General Assembly, in fact, draft resolutions were described only by the word "proposals". It was therefore clear that a Member of the United Nations which was not a member of the Council and was participating in accordance with an invitation under rule 75 might itself submit a draft resolution. Since the non-member of the Council might itself submit a draft resolution, it was the opinion of the Office of Legal Affairs that it might join in co-sponsoring a resolution submitted by a member or members of the Council, provided, of course, that the other sponsors so agreed.[24]

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12. Interpretation of Economic and Social Council resolution 1621 A (LI) with regard to the enlargement of the Committee on Natural Resources established by the Council

Memorandum to the Secretary of the Economic and Social Council

1. We refer to your memorandum on the enlargement of the membership of the Committee on Natural Resources. The relevant provisions of Economic and Social Council resolution 1621 A (LI) of 30 July 1971 on this question are the following operative paragraphs:

> "1. *Recommends* the General Assembly to take, at its twenty-sixth session, all necessary steps to amend the Charter to ensure an early enlargement of the Council to 54 members, the additional 27 seats to be allocated in accordance with the present geographical distribution in the Council;
>
> "2. *Decides* to enlarge, in the interim period, the membership of its sessional committees and the Committee on Natural Resources to 54 members as from 1 January 1972;
>
> "3. *Requests* the General Assembly to elect, at its twenty-sixth session in addition to the 9 new members of the Council, 27 States Members of the United Nations to serve on the sessional committees of the Council in accordance with the present geographical distribution of seats in the Council."

2. The wording of operative paragraph 2 indicates that "the interim period" applies to the enlargement of both the membership of the sessional committees and the membership of the Committee on Natural Resources. Operative paragraph 2, in conjunction with operative paragraphs 1 and 3, further indicates that the interim period begins on 1 January 1972 and ends on the date on which the Council itself is enlarged by the addition of 27 members. While this period could be applied to the sessional committees which are committees of the whole membership of the Council, the same could not be said for the Committee on Natural Resources.

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[24] In the listing of co-sponsors, the names of States not members of the Economic and Social Council are accompanied by a foot-note reading as follows: "Under rule 75 of the rules of procedure of the Council" (see for example document E/L.1391/Rev.2).

3. It will be recalled that the Committee on Natural Resources was established by the Economic and Social Council as a standing committee composed of 38 members to be elected by the Council on the basis of equitable geographical distribution (Economic and Social Council resolution 1535 (XLIX) of 27 July 1970, as amended by a decision taken at the 1731st meeting of the Council on 13 November 1970). Thus, in the first place, the membership of the Committee on Natural Resources does not depend on the membership of the Council. Secondly, the members of the Committee are elected by the Council. Consequently, "the interim period" can have no application to the Committee unless, in adopting operative paragraph 2 of its resolution 1621 A (LI), it was the intention of the Council that the membership of the Committee on Natural Resources, after having been increased to 54 members, should be reconstituted at the end of the interim period. The relevant meetings records of the Council, however, do not bear out this intention.

4. The above examination leads to the conclusion that, from the legal point of view, the enlargement of the membership of the Committee on Natural Resources should not be linked to any amendment of the Charter for the enlargement of the Council itself, nor should it be tied to the request of the Council contained in operative paragraph 3 of its resolution 1621 A (LI).

30 September 1971

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13. Question whether the Committee on Crime Prevention and Control is a subsidiary organ of the Economic and Social Council

Memorandum to the Secretary of the Economic and Social Council

1. We refer to your memorandum on the question of the status of the Committee on Crime Prevention and Control.

2. Under General Assembly resolution 415 (V), an *Ad Hoc* Advisory Committee of Experts was selected by the Secretary-General from among the members nominated by each United Nations consultative group in the field of the prevention of crime and the treatment of offenders. The same resolution further stated that "the purpose of such a Committee would be to advise the Secretary-General and the Social Commission".

3. In 1965, the Secretary-General proposed that the expert technical knowledge of the *Ad Hoc* Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders should be composed of ten members thus allowing for broader geographic representation.[25] This proposal was endorsed by the Social Commission at its sixteenth session and later approved by the Economic and Social Council in its resolution 1086 B (XXXIX) on 30 July 1965. Operative paragraph 3 of this resolution read as follows:

> "*Agrees* that the expertise of the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders should be made available on a continuing basis, that it should report as appropriate to the Social Commission, and that its membership should be increased from seven to ten".

4. On 21 May 1971 the Economic and Social Council, on the recommendation of the Commission for Social Development, adopted resolution 1584 (L) in which the Council decided "to enlarge from ten to fifteen the membership of the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders established under General Assembly resolution 415 (V), in order to provide the variety of professional expertise

[25] See *Official Records of the Economic and Social Council, Thirty-ninth Session, Supplement No. 12* (E/4061), para. 29.

needed on social defense questions spread over a wider geographical area...". The Council further decided that "the members of the Committee shall be appointed by the Economic and Social Council on the recommendation of the Secretary-General, that the Committee be renamed the Committee on Crime Prevention and Control and that it should report to the Commission for Social Development and, as appropriate on particular aspects, to the Commission on Human Rights and the Commission on Narcotic Drugs".

5. From the last mentioned resolution of the Economic and Social Council, it is clear that the renamed Committee possesses the characteristics of a subsidiary organ of the Council, since it was the Council which determined its size, appointed its members and instructed it to report to certain subsidiary organs of the Council.

6. It is, however, not entirely clear whether, by its resolution 1086 B (XXXIX) which placed the Advisory Committee on a continuing basis, increased the membership of the Advisory Committee from seven to ten and required the Advisory Committee to report to the Social Commission, the Council had already transformed the Advisory Committee into one of its subsidiary organs. Nevertheless for the purpose of the present memorandum, it suffices to conclude that under the terms of Council resolution 1584 (L), the Committee is a subsidiary organ of the Council and should be shown as a standing committee in the annex to the report of the Council.

7 October 1971

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14. Question whether a Member State of the United Nations not within the geographical scope of the Economic Commission for Asia and the Far East may be admitted to membership of the Commission

Memorandum to the Chief, Regional Commissions Section, Department of Economic and Social Council

1. You have requested our views on the general question whether a Member State of the United Nations not in the ECAFE region may be admitted to membership of the Commission. In order to place the question in its proper perspective, we have examined the records for the last twenty-four years of both the Commission and the Economic and Social Council. The salient facts as shown by those records are given in Part I below. Part II sets out the conclusions arrived at both from the legal standpoint and in the light of past practice.

I. *Practice concerning the membership of ECAFE*

2. ECAFE was established by the Council in resolution 37 (IV) of 28 March 1947. Its terms of reference included the following provisions:

(1) that the Commission would make or sponsor such investigations and studies of economic and technological problems and development *within territories of Asia and the Far East* as the Commission deems appropriate (paragraph 1 (*b*));

(2) that the territories of Asia and the Far East referred to in paragraph 1 shall include in the first instance British North Borneo, Brunei and Sarawak, Burma, Ceylon, China, India, Indo-Chinese Federation, Hong Kong, Malayan Union and Singapore, Netherlands Indies, Philippine Republic and Siam (paragraph 2); and

(3) that the members of the Commission shall in the first instance consist of Australia, China, France, India, Netherlands, Philippine Republic, Siam, Union of Soviet

Socialist Republics, United Kingdom and United States of America, provided that any State in the area which may hereafter become a Member of the United Nations shall be thereupon admitted as a member of the Commission (paragraph 3).

Thus, of then *original* members of the Commission, six were not within the geographical scope of ECAFE.

3. In the same resolution, the Council requested the Commission to consider at its first session and prepare recommendations concerning:

"(*a*) The membership of the Commission, including the provisions to be made for associating with the work of the Commission any territory or group of territories in the area that may be proposed from time to time by the member Government responsible for the international relations of such territory or group of territories;

"(*b*) Its geographical scope;

"(*c*) Any other changes in or additions to its terms of reference which the Commission may deem necessary or desirable. The Commission shall, in this connexion, take note of all the documents before the Council and its committee and the discussions thereon."

4. At its first session in 1947 the Commission established a committee of the whole to examine the three questions referred to above. The discussion of the Committee centered on the question of associating any territory or group of territories in the area with the work of the Commission. Four proposals were submitted to the Committee: one by the United Kingdom which would grant associate membership, without voting rights, to those territories upon application on their behalf made to the Commission by the metropolitan Power responsible for the conduct of their international relations; one by India which would grant full membership to those territories upon their application to be forwarded by the metropolitan Power concerned; a third by the Soviet Union which would provide that membership of the Commission should comprise all Member countries of the United Nations in Asia and the Far East, with the exception of Turkey since that country was already a member of the Economic Commission for Europe, and that the countries of Asia and the Far East which were not Member States of the United Nations might be admitted by the Commission as consultants on questions of particular concern to them; and a fourth by the Philippines which would provide that in addition to the original membership of the Commission, there should be added any State or States in the area which might subsequently become Members of the United Nations provided: (*a*) that any of the territories within the Commission's geographical scope to be admitted to membership upon election by the Economic and Social Council on the Commission's recommendation and (*b*) that any such territories not elected for membership were to be invited by the Commission to participate in the work of the Commission in a consultative capacity.[26] After extensive discussion, the Committee finally adopted a text along the line of the United Kingdom proposal with the addition that if a territory has become responsible for its own international relations it may be admitted as an associate member of the Commission on itself presenting its application to the Commission.

5. As to the possible changes in the geographical scope of the Commission, the Committee reported that it had no recommendation to submit to the Council as no delegations had proposals to make on this subject. The Committee added, however, that:

"The delegate for Siam drew attention to the possibility that an Economic Commission for the Middle East might be established on which countries west of Iran might be represented. He was therefore of the opinion that the Commission's geographical scope should comprise all countries east of Iran."

[26] See *Official Records of the Economic and Social Council, Fifth Session, Supplement No. 6*, part II, chapter III.

6. The recommendations of the Committee of the Whole, including those concerning associate membership of ECAFE, were adopted by the Economic and Social Council in resolution 69 (V) of 31 July 1947 and incorporated in the Commission's terms of reference.

7 By resolution 105 (VI) of March 1948, the Economic and Social Council, on the recommendation of ECAFE, admitted New Zealand as a member of the Commission. New Zealand was, however not included in the geographical scope of the Commission at that time.

8. At the third session in June 1948 of the Commission, the Executive-Secretary indicated that he had received a request from the Government of Nepal for sending an observer to the session. Nepal had been informed that under the Commission's terms of reference it was not within the geographical scope of the Commission but that its request would be brought to the notice of the Chairman. The Commission, after discussion, adopted a resolution submitted by India requesting the Economic and Social Council to amend the terms of reference of the Commission by enlarging its geographical scope so as to include Nepal.[27] The preambular paragraph of this resolution read as follows:

> "Considering that the Kingdom of Nepal falls geographically within the region of Asia and the Far East and that Nepal is an important territory from the point of view of economic resources necessary for the rehabilitation of the region,"

This recommendation was adopted by the Economic and Social Council in its resolution 144 A (VII) of 2 August 1948 which amended the terms of reference of the Commission by including Nepal "amongst the territories within the scope of the Commission". At its eighth session, the Economic and Social Council further amended the terms of reference of the Commission by including Nepal as an associate member of the Commission (resolution 187 A (VIII) of 11 March 1949) and by including Korea among the territories within the geographical scope of the Commission and adding it to the list of associate members of the Commission (resolution 187 B (VIII) of 10 March 1949).

9. By the end of 1950 through independent admission (as in the case of New Zealand) or automatic admission in accordance with the terms of reference of the Commission, the members and associate members of the Commission were as follows:

(*a*) *Members*: Australia, Burma, China, France, India, Indonesia, the Netherlands, New Zealand, Pakistan, the Philippines, Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

(*b*) *Associate members*: Cambodia, Ceylon, Hong Kong, Korea, Laos, Malaya and British Borneo (i.e. North Borneo, Brunei, Federation of Malaya, Sarawak and Singapore), Nepal and Viet-Nam.

10. By resolution 295 B (XI) of 16 August 1950, the Economic and Social Council decided to appoint an *ad hoc* committee to undertake, in co-operation with the Secretary-General, a comprehensive review of the organization and operation of the Council and its commissions and to submit a report and recommendations thereon to the thirteenth session of the Council.

11. At its seventh session held in February/March 1951 in Lahore, ECAFE had before it a note by the Executive Secretary on the future of the Commission. In section B of this note entitled "Territorial scope and membership", the Executive Secretary stated:

> "The territorial scope of the Commission, as defined in paragraph 2 of its terms of reference, includes 'British North Borneo, Brunei and Sarawak, Burma, Ceylon, China, Hong Kong, India, Indo-Chinese Federation [now Cambodia, Laos and Viet-Nam], Korea, Federation of Malaya and Singapore, Nepal, Netherlands Indies [now Indonesia], Pakistan, Philippine Republic and Siam [now Thailand]'. The Commission may wish to consider whether it would be

[27] *Ibid., Seventh Session, Supplement No. 12*, chapter III.

desirable to include Japan in its geographical scope, in view of the close relations of this country to the territories which are now within the geographical scope of the Commission.

"The members of the Commission consisted, in the first instance, of Australia, China, France, India, the Netherlands, the Philippine Republic, Thailand, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America. Of these ten full members of the Commission, six were countries outside its geographical scope. There are now fourteen full members of the Commission, Burma, Indonesia, New Zealand, Pakistan having been added to the original ten countries. Of the present members, half are countries outside the Commission's geographical scope, a situation which does not exist in other regional economic commissions. The Commission is, therefore, in the position of having among its full members seven non-regional Powers. There is no need for me to emphasize how significantly the participation of these seven non-regional Powers in the Commission's work has contributed to its accomplishments. Nor is it necessary for me to remind the Commission of the fundamental fact that this regional Commission is a subsidiary body of the Economic and Social Council and a part of the United Nations, and that the United Nations while recognizing and recommending the formation of regional bodies, has stressed the underlying fundamental principles of a world economy. The Commission's aim is not to emphasize regional grouping, not to promote regional economic autarchy, not to hinder the development of a universal multi-lateral trading system; and the Commission has always kept in mind the broader question of world economic co-operation. However, the Commission is a commission for Asia and the Far East and it has been argued, in my view not unreasonably, that when the Commission collectively reaches a decision by vote, especially on matters not directly involving countries outside the region, such a decision should in fact reflect the view of the members of the region or the majority thereof; and that a Commission decision reached because the votes of non-regional members outweigh the votes of regional members, or most of them, is anomalous and inappropriate. Yet such decisions have from time to time in fact been taken. While it may not be desirable to make any formal change in the membership of the Commission, member governments might nevertheless wish to employ devices, formal or informal, to ensure that decisions of this regional Commission accurately reflect the views of its regional members. Such devices might include abstention of non-regional members or at any rate the exercise of restraint, in voting, especially on matters predominantly concerning the region." [28]

12. After a brief discussion, this Note was referred by the Commission to its *Ad Hoc* Committee set up to consider the future of the Commission. One of the recommendations of the *Ad Hoc* Committee, which was endorsed by the Commission and included in its report to the Council was as follows:

"In effect, therefore, countries within the region, both members and associate members, have been taking their own decisions in the formulation of which the presence, co-operation and advice of countries outside the geographical scope of the Commission have been most welcome. Member governments feel, however, that the time has come when clearer recognition should be given to the principle that member countries belonging to the region should take their own decisions in the Commission on their own economic problems; and that in doing so they should take full account of the views of the associate members in the region, to be ascertained when not known by referring any specific resolution to a committee. In pursuance of this principle the member countries of the Commission not in the region would be willing, as a general rule, to refrain from using their votes in opposition to economic proposals predominantly concerning the region which had the support of a majority of the countries of the region. The Commission does not consider a more formal expression of this conclusion to be necessary and notes with satisfaction that all members are agreed on the principles which governs their co-operation." [29]

[28] Document E/CN.11/278.

[29] *Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 7* (E/1981), para. 341. This statement has been referred to as the Lahore Agreement or Lahore Convention.

13. The *ad hoc* Committee set up by the Economic and Social Council and referred to in paragraph 10 above, in its second report to the Council, made a number of recommendations concerning the organization of the regional commissions. One of these recommendations read as follows:

> "The *ad hoc* Committee is of the opinion that consideration of the organization and functions of regional subsidiary organs of the Council requires that somewhat different criteria be applied than in the case of the 'functional' commissions. By their nature and constitution, regional subsidiary organs are primarily concerned with problems affecting the region which they cover and tend to reflect the preoccupations of the countries in that region. It is therefore necessary to assess their usefulness not only from the point of view of the United Nations as a whole but also from the point of view of *the Governments in the region from which their membership is drawn.*" (Italics added.) [30]

This recommendation was approved on 18 September 1951 by the Council in paragraph 40 of its resolution 414 (XIII).

14. By a letter dated 22 February 1963 addressed to the Executive Secretary of ECAFE,[31] the Government of New Zealand, in requesting the extension of the geographical scope of ECAFE to include New Zealand, stated that the point had been reached where extension of the ECAFE region's boundaries to include New Zealand would seem to constitute a natural and logical development. The letter further stated.

> ". . . New Zealand and the countries of the ECAFE region are in close geographic proximity and share a community of interest as developing countries. The New Zealand Government has a deep and continuing concern that the area's problems of development should be solved and it wishes to co-operate as closely as possible with countries in the region in tackling that task. Moreover, unlike all the other non-regional ECAFE members except Australia, New Zealand is not and cannot be included in any of the geographical areas covered by the other United Nations Regional Commissions."

The Executive Secretary of ECAFE also received a communication from the Government of Australia dated 5 March 1963 requesting the extension of ECAFE's geographical scope to include the Commonwealth of Australia and giving reasons for its request similar to those stated by the Government of New Zealand.[32]

15. By resolution 946 (XXXVI) of 5 July 1963 the Economic and Social Council approved, *inter alia*, the recommendation of ECAFE that continental Australia and New Zealand be included in the geographical scope of the Commission and decided to amend the terms of reference of the Commission accordingly.

16. In the preamble of its resolution 1561 (XLIX) on "Calendar of Conferences" adopted on 12 November 1970, the Economic and Social recalled "that the membership of the regional economic commissions, unlike that of the principal organs of the United Nations, *is limited primarily by geographical considerations and that not all Members of the United Nations are eligible for membership in these regional organs.* (Italics added.)

17. In addition to those States or territories referred to in the preceding paragraphs which were admitted to the Commission as full or associate members, others have joined the Commission or have changed their status from associate to full membership in accordance with the Commission's terms of reference. The present composition of ECAFE is as follows:

(*a*) *Members*: Afghanistan, Australia, Burma, Ceylon, China, France, India, Indonesia, Iran, Japan, the Khmer Republic, Laos, Malaysia, the Mongolian People's Republic, Nepal, the Netherlands, New Zealand, Pakistan, the Philippines, the Republic of Korea,

[30] Document E/1995/Add.1.

[31] Document E/CN.11/616.

[32] Document E/CN.11/619.

the Republic of Viet-Nam, Singapore, Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Western Samoa.

(*b*) *Associate members*: Brunei, Hong Kong, Fiji and Papua and New Guinea.

II. *Conclusion*

18. The foregoing review of the proceedings and decisions of the Economic and Social Council and the Economic Commission for Asia and the Far East shows: (1) that while the majority of the original members of the Commission were non-regional States, the discussions and decisions in both the Commission and the Council immediately after the establishment of the Commission, clearly reflected an assumption of the regional character of the Commission's membership; (2) that in 1951, as the result of a comprehensive review of the organization and operation of regional economic commissions, the Council explicitly recognized that regional economic commissions drew their membership from Governments in the region (see para. 13 above); (3) that all the members and associate members admitted to the Commission since its establishment are, without exception, countries or territories within the geographical scope of ECAFE,[33] and (4) that the limitation of eligibility for membership in regional economic commissions to that based primarily on geographical considerations has most recently received further confirmation from the Council (see para. 16 above).

19. From the legal point of view, the proviso of paragraph 3 of ECAFE's terms of reference merely authorizes the automatic admission to ECAFE of any State in the area which has become a Member of the United Nations. This proviso, standing alone, does not imply that a State not in the area which has become a Member of the United Nations may not be admitted to membership in ECAFE. Moreover, since ECAFE is a subsidiary organ established by the Economic and Social Council, the question of its membership, except for the automatic admission in accordance with paragraph 3 of its terms of reference, is one for the Council to decide. Theoretically it is within the competence of the Council to admit any State to membership of the Commission or even to amend the terms of reference concerning the membership and geographical scope of the Commission. Both in theory and from legal standpoint, therefore, the Council is not precluded from admitting to ECAFE a State which is not in the ECAFE region. Nevertheless, in view of the established practice as well as the repeated affirmation of this practice by the Council itself, as indicated above, it does not seem likely that the Council would now alter this practice by granting membership to a State not in the ECAFE region without compelling reasons.

9 March 1971

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15. Question of the admission to membership of the Economic Commission for Asia and the Far East of a State within the Commission's geographical scope which has become a Member of the United Nations

Memorandum to the Chief, Regional Commission Section, Department of Economic and Social Affairs

1. You have referred to us the question of the admission of Fiji as a member of the Economic Commission for Asia and the Far East.

[33] The inclusion of continental Australia in the geographical scope of ECAFE has in fact reduced the original non-regional members of ECAFE from 6 to 5.

2. The automatic admission to membership of ECAFE of a State within the Commission's geographical scope which has become a Member of the United Nations is provided for in paragraph 3 of the terms of reference of ECAFE. Under that paragraph, once the State concerned expresses its desire to join ECAFE as a member, the Commission is duty-bound to admit it to membership. The obligation and authority of the Commission to do so was confirmed by the Economic and Social Council in resolution 144 B (VII) in which the Council considered "that the Economic Commission for Asia and the Far East already has authority to deal with applications for membership from areas within its geographical scope".

3. Since Fiji was included in the geographical scope of the Commission (paragraph 2 of the Commission's terms of reference) in 1968[34] and became a Member of the United Nations in 1970, it should be admitted to membership of ECAFE once its desire to be so admitted is ascertained. This action would result in the amendment of paragraphs 3 and 4 of the terms of reference (i.e., the addition of Fiji to the list of members in paragraph 3 and deletion of Fiji from the list of associate members in paragraph 4) for which endorsement by the Economic and Social Council is required.

4. I would therefore suggest that the Commission include in its annual report to the Economic and Social Council: (1) a paragraph concerning admission of Fiji as a member and (2) the following as section II of the draft resolution for action by the Council:

The Economic and Social Council

Takes note of the admission of Fiji as a member of ECAFE;

Approves the consequential amendment of paragraphs 3 and 4 of the Commission's terms of reference.

1 February 1971

16. Application of the Republic of Nauru for full membership in the Economic Commission for Asia and the Far East

Memorandum to the Chief, Regional Commissions Section, Department of Economic and Social Affairs

1. You have asked for our views on any legal aspects connected with the application of Nauru for full membership in the Economic Commission for Asia and the Far East.

2. The status of Nauru, in so far as its application for membership in ECAFE is concerned, is similar to that of Western Samoa. Both States were former Trust Territories and, after they became independent, chose to join not the United Nations but one or two of the specialized agencies (Western Samoa is a member of WHO and Nauru is a member of UPU and ITU). It is clear that the admission of Nauru, like that of Western Samoa, could only be effected by a decision of the Economic and Social Council[35] which would in so doing amend paragraphs 2 and 3 of the terms of reference of ECAFE to include Nauru in the geographical scope of ECAFE and among the members of the Commission. The Council could so decide either on the recommendation of ECAFE or on its own initiative.

3. Another related question arising out of the application of a non-member State for membership in a regional economic commission is that of financial contributions to the

[34] See *Official Records of the Economic and Social Council, Forty-fifth Session, Supplement No. 2* (E/4498), paras. 292-293 and Economic and Social Council resolution 1341 (XLV).

[35] The Council admitted Western Samoa as a member of ECAFE by resolution 946 (XXXVI).

United Nations as a condition of admission. In its resolution 517 (XVII) the Economic and Social Council decided to admit certain non-member States to membership in ECAFE and ECE with the proviso that "in each case the States apply for such membership and agree to contribute annually such equitable amounts as the General Assembly shall assess from time to time in accordance with procedures established by the General Assembly in similar cases". This same condition concerning financial contributions was laid down in Council resolution 594 (XX) in which the Council admitted the Federal Republic of Germany as a member of ECE. However, no such condition was imposed by the Council when it admitted Western Samoa as a member of ECAFE. The last-mentioned resolution was adopted by the Council on the recommendation of ECAFE. The records indicate that the recommendation of ECAFE was reached at a closed meeting of the heads of delegations of the members of the Commission held in the morning of 12 March 1963. While these records do not show clearly why in its recommendation ECAFE had not required Western Samoa to make contributions to its budget, it is possible that the financial situation of Western Samoa was taken into account at the closed meeting. In this connexion, it may be relevant to note that after the Chairman announced at the 282nd meeting of the Commission the unanimous agreement reached at the closed meeting on the admission of Western Samoa, the representative of Western Samoa, who was present at the meeting as an interested party, referred to the insufficient revenues of his Government and stated that because of restricted financial resources and lack of qualified personnel it was improbable that Western Samoa would be able to participate in all the activities of ECAFE.[36] In the case of the application of the Republic of Nauru for membership in ECAFE, it is of course for the Commission (if it wishes to make a recommendation on the application) and the Economic and Social Council to consider whether the financial exemption given to Western Samoa should also be accorded to Nauru.[37]

13 April 1971

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17. Question of the admission of the Cook Islands as an associate member of the Economic Commission for Asia and the Far East

Memorandum to the Chief, Regional Commissions Section, Department of Economic and Social Affairs

1. You have asked for our views on the legal aspects of a possible application for membership on behalf of the Cook Islands, including the procedural steps to be taken on this matter by the Economic Commission for Asia and the Far East and the Economic and Social Council.

2. In its resolution 2064 (XX) of 16 December 1965, the General Assembly considered that the Cook Islands had attained full internal self-government, but reaffirmed "the responsibility of the United Nations under General Assembly resolution 1514 (XV) to assist the people of the Cook Islands in the eventual achievement of full independence, if they so wished, at a future date".

3. Prior to the adoption of this resolution by the Assembly, the representative of New Zealand made the following statement in the Fourth Committee.

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[36] See document E/CN.11/628, pp. 202-203.

[37] By resolution 1605 (LI) of 20 July 1971, the Economic and Social Council approved the recommendation of ECAFE that Nauru be included in the geographical scope of the Commission and admitted as a member of the Commission and decided to amend paragraphs 2 and 3 of the terms of reference of the Commission accordingly.

"Yet the Cook Islands could not be called a sovereign independent State, since its people were still New Zealand citizens and the Cook Islands Parliament, in one clause of a resolution adopted on 26 July 1965, had requested New Zealand, in consultation with the Government of the Cook Islands, to be responsible for the external affairs and defence of the islands . . ." [38]

It is our understanding that no further change has taken place in the status of the Cook Islands.

4. Paragraph 5 of the terms of reference of ECAFE reads as follows:

"Any territory, part or group of territories within the geographical scope of the Commission as defined in paragraph 2 may, on presentation of its application to the Commission by the member responsible for the international relations of such territory, part or group of territories, be admitted by the Commission as an associate member of the Commission. If it has become responsible for its own international relations, such territory, part or group of territories, may be admitted as an associate member of the Commission on itself presenting its application to the Commission."

Since the Cook Islands have not become responsible for their own international relations, an application for associate membership of ECAFE will have to be made in accordance with the first sentence of paragraph 5 quoted above. This provision consists of two requirements: first, the territory or group of territories must be within the geographical scope of ECAFE as defined in paragraph 2 of its terms of reference and secondly the application must be made by the member of ECAFE responsible for the international relations of the territory concerned.

5. In regard to the first requirement it may be noted that paragraph 2 of ECAFE's terms of reference enumerates the territories of Asia and the Far East. Consequently in order to become an associate member of ECAFE, the Cook Islands should be named in paragraph 2 of the Commission's terms of reference. As to the second requirement, it is clear that the application must be made by New Zealand on behalf of the Cook Islands.

6. Paragraph 4 of the terms of reference lists the associate members of ECAFE. Therefore, should the Cook Islands be admitted to associate membership, its name should be included in paragraph 4.

7. The foregoing shows that the admission of Cook Islands to associate membership of ECAFE will necessitate the amendment of both paragraphs 2 and 4 of the Commission's terms of reference. These amendments will have to be made by the Economic and Social Council. There is, however, a difference between the effect of amending paragraph 2 and that of amending paragraph 4. Since it is within the competence of ECAFE under paragraph 5 of its terms of reference to consider and decide on any application for associate membership, the amendment of paragraph 4 by the Council is merely a formality. On the other hand, the amendment of paragraph 2 is a prerequisite for a decision of the Commission to admit a territory to associate membership. So long as the territory concerned has not been included in paragraph 2, its admission to associate membership cannot be effected merely by a decision of the Commission.

8. In the light of the above analysis, our view is that the most orderly procedure to deal with a possible application on behalf of the Cook Islands for associate membership in ECAFE would be as follows:

(1) Prior to the examination by ECAFE of an application made by New Zealand for granting associate membership to the Cook Islands, the Economic and Social Council should take a decision to amend paragraph 2 of ECAFE's terms of reference by including the Cook Islands within the geographic scope of the Commission. For this purpose, the Council may, in accordance with rule 17 of its rules of

[38] *Official Records of the General Assembly, Twentieth Session, Fourth Committee*, 1560th meeting, para. 36.

procedure, add an item to the agenda of its organizational meetings in January 1972.

(2) Once paragraph 2 has been amended by the Council to include the Cook Islands within the geographical scope of ECAFE, the application for associate membership, if approved by the Commission, will take effect immediately. In other words, the representatives of the Cook Islands could participate in the work of ECAFE as an associate member without having to wait for the amendment of paragraph 4 of the Commission's terms of reference by the Economic and Social Council, which is in a sense automatic.

9. If it is not possible for the Economic and Social Council to amend paragraph 2 of ECAFE's terms of reference before the application for associate membership made by New Zealand on behalf of the Cook Islands is considered by the Commission, a decision by the Commission in favour of the application will not take effect until paragraphs 2 and 4 of the Commission's terms of reference are amended by the Council. In this event the Cook Islands will not be able to participate at the same session of ECAFE as an associate member. Their representatives may, of course, be included in the delegation of New Zealand for the purpose of attending the session of the Commission.[39]

30 November 1971

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18. Fundamental legal issues raised by the draft of an Asian Clearing Union Agreement to be concluded between the "central banks and monetary authorities" of various countries[40]—Question of the law governing such an agreement—Question whether the Clearing Union thus established would be endowed with legal personality and could claim privileges and immunities—Determination of the entities eligible to become parties to the Agreement

Study prepared for the Economic Commission for Asia and the Far East[41]

1. The fundamental problems posed by the Agreement arise from the fact that it is not intended that the parties thereto should be States or other subjects of international law, but central banks, treasury and other monetary authorities, i.e. entities to which normally international law does not directly apply and which, in particular, do not as a rule enter into agreements governed by it. It would therefore seem that an agreement between such entities would normally be governed by a municipal legal order, to be determined, in the event of a dispute, by applying the conflict of laws rule of the *lex fori* or such conflict of laws rule as might be selected by the arbitral tribunal if the agreement contains an arbitration clause (see paragraph 6 below).

2. There can be no doubt that this conclusion would apply to an agreement between monetary authorities if its substance did not differ from that of an agreement normally governed by municipal law (e.g. a contract of sale between two central banks), especially if the agree-

[39] By resolution 1699 (LIII) of 11 July 1972, the Economic and Social Council approved the recommendation of ECAFE that the Cook Islands be included in the geographical scope of the Commission and admitted as an associate member of the Commission, and decided to amend paragraphs 2 and 4 of the terms of reference of the Commission accordingly.

[40] As contained in ECAFE document TRADE/TLP/ACU (1)/6, pp. 5-22.

[41] In identical letters dated 30 August 1971, the Executive Secretary of ECAFE gave the Governments concerned an account of the main points of this study.

ment related to activities which are outside the functions the institutions perform in the direct fulfilment of their statutory objectives; but it appears unnatural that an agreement between such entities should be governed by municipal law when, as in the case of the Clearing Union Agreement, its substance does not conform neatly to any one of the established categories of private law and, above all, when, as is also the case here, the activities to be undertaken by the parties pursuant to the Agreement are impressed with public interest inasmuch as they are performed in direct furtherance of the purposes for which the institutions have been created.

3. It is for this reason that, according to some authorities, agreements of this type between autonomous public entities should be governed by local systems other than municipal law (see F. A. M. Riad, "L'entreprise publique en droit international privé", Académie de droit international, *Recueil des Cours*, 1963, vol. I, pp. 640-645). However, views differ as to the legal order that should regulate such agreements. Some authors maintain that they are to be governed by general principles of law, while others hold that public international law is applicable. It might also be contended, as has been done in similar cases, that the agreements in question are to be considered as law unto themselves and should therefore be regarded as "legislative contracts". (See, among others, A. Verdross "Quasi-International Agreements and International Economic Transactions", *The Yearbook of World Affairs*, 1964, pp. 230-249 and J. F. Lalive "Contracts between a State or a State Agency and a Foreign Company", *The International and Comparative Law Quarterly*, volume 13, 1964, pp. 987-1021).

4. The question whether the draft agreement under review could create a legal entity, i.e. an institution endowed with legal personality, is related to the difficulties in determining the proper law of the Agreement and also gives rise to uncertainties. Legal persons are, as a rule, created by agreement of a private law nature which, by virtue of private law rules, can have such an effect, by acts of the legislature, by decisions of the executive, or by treaties, i.e. agreements concluded by States or governments under international law. However, as noted earlier, the Clearing Union Agreement does not fall squarely into any one of these categories. It may therefore be doubtful whether it could bring into being a legal entity distinct from the parties. Moreover, even if it could have this effect, it might well be debatable whether the legal person thus created would be a subject of international law or of municipal law.

5. The difficulties outlined could adversely affect the operation of the Clearing Union. For the institution might not be able to function adequately without legal personality, inasmuch as it is required to conclude agreements (Article XI, para. (*b*), Article IX, section 1, paras. (8) and (9); Article V, section 4, last sentence) and presumably the relationship between the Union, on the one hand, and the General Manager and the staff, on the other, would be of a contractual nature (Article X).

6. The fact that, in accordance with Article XIII of the Agreement, certain disputes relating thereto would be settled by arbitration compounds the difficulty of determining the proper law of the Agreement, for it has been held that arbitrators are not bound by the rules of conflict in force at the forum of the arbitration (unlike national tribunals, which are bound by the conflict of laws rules of the *lex fori*), and can thus base their choice of law on the common intention of the parties (which appears to be uncertain in the case of the Clearing Union Agreement, since it contains no choice-of-law provision) or use the connecting factors generally advocated in doctrine and used in case law. (See Part B (*b*) of the arbitral judgement delivered in the dispute between Sapphire International Petroleum Ltd. and the National Iranian Oil Company on 15 March 1963, quoted in *The International and Comparative Law Quarterly*, volume 13, 1964, pp. 1011-1015.)

7. It may also be doubtful whether the Clearing Union, if established solely on the basis of an agreement between central banks and monetary or treasury authorities, would be able to claim privileges and immunities. For as a rule a legal entity carrying on operations in a country can claim privileges and immunities therein only to the extent that they are granted to it by the authorities of that country under national legislation, general international law, or a treaty to which the country is a party.

8. It may be useful, finally, to draw attention to certain difficulties which might arise, in the sphere of municipal law, with regard to the modalities of participation in the Clearing Union. These difficulties relate to the determination of the national agency which is, in conformity with the Clearing Union Agreement, eligible to become a party thereto, and to the question of whether that entity would be empowered to do so. The inclusion of "treasury or other monetary" authorities (article II, para. (*b*)) among the entities eligible to become parties to the Agreement could give rise to difficulties. Opions might differ in a country as to which is precisely the agency that constitutes the "treasury or other monetary authority" of that country. It might occur, in addition, that the agency selected lacks status as a legal person and is thus ill-suited to become a party to the Agreement. It might also be controversial whether in a country having a "monetary and/or treasury authority" distinct from its central bank, participation in the Clearing Union should be through the former or through the latter. In this respect it should be noted that there is apparently no compelling reason why a government of an Asian country should be debarred from becoming a party to the proposed Agreement if it can claim to be the "monetary or treasury authority" of the State in question, the Agreement being open to both central banks and such authorities. Similarly, it is not inconceivable that the monetary or treasury authority of one of the countries qualified to participate in the Clearing Union could claim that in adhering to the Agreement it is exercising the treaty-making power of the State concerned. In this respect see Oppenheim (*International Law—Treatise*, 8th ed., d. I, p. 885): "for some non-political purposes of minor importance, certain minor functionaries are recognized as competent to exercise the treaty-making power of their States". (See also in this connexion, McNair, *Law of Treaties*, 1961 pp. 20-22.) Again, it could occur that a central bank is competent to represent the government of the State under the jurisdiction of which it is placed: section 117 of the Philippine Central Bank Act, as quoted by Aufricht (*Central Banking Legislation*, 1961, vol. I, p. 564), provides that "the Central Bank may be authorized by the Government to represent it in dealings, negotiations or transactions with the International Bank for Reconstruction and Development and with other foreign or international financial institutions or agencies", section 110 of the Monetary Law Act of Ceylon containing a similar provision (Aufricht, op. cit., vol. 1, pp. 320 and 321). It may occur that the national agency ideally qualified to become a party to the Clearing Union is not empowered to do so by the rules of municipal law governing its functions and operations. If any or all of the central banks and/or monetary authorities eligible to become parties to the Agreements lack, on the plane of municipal law, the authority to become bound by its provisions, the States under the jurisdiction of which they are placed might find it expedient to conclude a treaty empowering the entities to co-operate for the purposes of the Agreement. (See, in this respect, article X of the General Treaty on Central American Economic Integration,[42] which might be regarded as the basis for the co-operation between the central banks of Central America referred to in para. 9 below.)

9. One should not conclude from the above remarks that the creation of the Union on the basis of an agreement along the lines of the present draft would necessarily be legally and practically unworkable. By virtue of agreements to which they alone are parties, the central banks of the five Central American countries have set up an international organiza-

[42] United Nations, *Treaty Series*, vol. 455, p. 3.

tion (known as the Central American Monetary Union) and a clearing union. The central banks of the countries of the Latin American Free Trade Association have established a clearing union by a similar method. By an agreement concluded on 13 August 1968 the central banks of the African States established the Association of African Central Banks. The principle that an international legal person can be created by virtue of a treaty is, after all, nothing more than a rule of customary international law, and it may well be that a new customary rule of international law is emerging under which such a legal person could also be created by an agreement concluded solely by autonomous public entities, such an agreement being governed by international law pursuant to another new customary rule. The grant of privileges and immunities to the Clearing Union might not be indispensable for the conduct of its operations. (The Central American Monetary Union and the Central America Clearing House have managed to function despite their inability to claim international privileges on the basis of their constituent instruments.) Moreover, the Clearing Union might conceivably be able to claim privileges and immunities in the territories of participating countries by virtue of its being regarded therein as a foreign public entity (see Riad, op cit., pp. 598-629).

10. If the Clearing Union were set up on the basis of a treaty all the legal difficulties previously outlined would be removed. The Clearing Union could be endowed with full juridical personality, both under the municipal laws of participating countries and under international law, by the constituent treaty. This treaty could grant the Clearing Union such privileges and immunities as the States adopting the treaty would consider necessary or useful for its operations. An alternative formula affording roughly the same advantages would consist in the conclusion of a multilateral treaty providing that the Clearing Union would have the status of a corporation under the laws of the participating country in which it would have its seat. Privileges and immunities could be granted to the Union in the basic treaty, which could provide that it would have international juridical personality. This procedure would be basically similar to that used for the creation of the Bank for International Settlements. (See in this respect, among others, Carlos Flieger, "Multinational Public Enterprises", International Bank for Reconstruction and Development, 1967 and "Corporations formed pursuant to Treaty", 76 *Harvard Law Review 1431*, 1963.) If, instead of applying these procedures, it is decided to establish the Clearing Union on the basis of an agreement like the one currently envisaged, the enactment by the host country of the Clearing Union of a law endowing the Union with personality and granting it privileges and immunities could be a means of strengthening the legal basis of the institution. It must be noted, however, that in strict law the host country would be free to repeal or amend this legislation.

23 July 1971

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19. Conference of European Ministers Responsible for Social Welfare—Provisions of the draft rules of procedure of the Conference concerning the examination of credentials and the elections—Question whether non-European Members of the United Nations might be invited to send observers to the Conference

Memorandum to the Assistant Director, Social Development Division, Department of Economic and Social Affairs

1. You have asked us to review certain provisions of the draft rules of procedure for the Conference of European Ministers Responsible for Social Welfare (hereafter

referred to as the European Conference). You have also requested our views on certain questions pertaining to the Conference.

2. With respect to the *examination of credentials* you propose, in order not to establish too cumbersome a procedure for a regional conference, that the credentials be examined by the Bureau of the Conference (President, Vice-President and Rapporteur).

3. The Office of Legal Affairs has always maintained that for an international conference convened by the United Nations, a credentials committee should be established to examine the credentials of representatives to the Conference and report on them. The basis for this view is that the President and the Vice-Presidents of a conference are not elected to deal with questions of representation and credentials which are of a special legal, political and technical character. As far as the present Conference is concerned, in view of the wish not to establish too cumbersome a procedure for a regional conference which would have approximately thirty participating States and a short duration, the relevant rule may be drafted as follows:

> "The Executive Secretary of the Conference, in consultation with the President, Vice-President and Rapporteur of the Conference, shall examine the credentials and report on them to the Conference without delay."

4. Regarding the *elections*, you raise the question whether the complicated procedure under which "All elections shall be held by secret ballot unless otherwise decided by the Conference" is really required. You add that the usual practice of nominations, seconds and tacit general approach is much simpler.

5. It is true that to our knowledge, no elections by secret ballot have taken place at the conferences convened by the United Nations and consequently the exception (namely, a decision of the conference to the contrary) has become the rule. Nevertheless, the rule has always been included in the rules of procedure of all conferences in order to meet a situation which may arise where there are several candidates for an office and no agreement can be reached on a single candidacy. In such a situation it has not been considered appropriate to hold the election by a show of hands. In any case, under the second part of the rule, the Conference can always follow the usual practice of election by acclamation.

6. With respect to the membership of the European Conference you note that in the present case, unlike that of the 1968 International Conference of Ministers Responsible for Social Welfare, no resolution of the Economic and Social Council provides a basis for deciding on the membership and limiting it to European States Members of the United Nations or members of the specialized agencies and the IAEA. You also note that in 1968 an observer from the Holy See was present although there was no reference in the convening resolution to the possibility of sending observers to the Conference. You therefore ask whether the Holy See might apply again for admission as observer to the European Conference and whether non-European Members of the United Nations might claim to be represented by observers in the Conference.

7. States invited to the 1968 Conference pursuant to Economic and Social Council resolution 1140 (XLI) were "States Members of the United Nations or members of the specialized agencies and the IAEA . . .". Therefore, it was in accordance with that resolution that the Holy See was invited as was also San Marino, though according to the Proceedings of the Conference, it did not participate in the Conference. It may be noted that a number of Members of the United Nations, and the Holy See, decided to send observers to the Conference rather than representatives.[43] An invited State may, of course, choose representation by observers instead of full participation in the Conference by representatives. There-

[43] United Nations publication, Sales No. E.69.IV.4.

fore, if the Holy See and San Marino are entitled to participate in the European Conference, they need not apply for admission as observers to that Conference.

8. There remains to determine what States are entitled to participate in the Conference. The only indication in that respect is contained in the *aide-mémoire* sent by the Secretary-General in a *note verbale* of 17 February 1971 to the European States Members of the United Nations or members of the specialized agencies and the IAEA inviting their comments on the merits of the proposal to convene the European Conference and on the possible agenda of the Conference. The relevant part of the *aide mémoire* reads as follows:

"II. PROPOSALS FOR THE ORGANIZATION OF THE CONFERENCE

"5. Subject to appropriate action by the competent policy-making organs of the United Nations on the basis of a positive outcome of the aforementioned consultations and the availability of the necessary financial and other resources, the proposed Conference would be convened under the United Nations auspices, with the co-operation of the Government of the Netherlands, in accordance with the following arrangements.

Membership

"6. The Secretary-General would invite Governments of European States Members of the United Nations or members of the specialized agencies and the International Atomic Energy Agency to be represented at the Conference by the minister or other official responsible for social welfare, accompanied whenever possible by appropriate senior advisers.

"7. The specialized agencies concerned, the United Nations Development Programme, the United Nations Children's Fund, the World Food Programme and the Economic Commission for Europe would be invited to send representatives to participate in the Conference. European inter-governmental organizations outside the United Nations system and the main non-governmental organizations in consultative status with the Economic and Social Council and active in the social welfare field would be invited to send observers."

This *aide-mémoire* was not published as a document but was referred to in a Note by the Secretary-General (E/CN.5/XXII/CRP.8) submitted to the Commission for Social Development.

9. In connexion with that note, the report of the Commission contains the following passage:

> ... The Commission was informed that the Secretary-General had engaged in consultations with Governments of European States Members of the United Nations or members of its specialized agencies on the merits of the proposal and that the replies received from Governments so far had been favourable. Some members expressed the view that all European States should be invited to participate in the proposed conference.[44]

10. It therefore appears that participation in the Conference is intended to be limited to the European States Members of the United Nations and members of the specialized agencies, although this has not been set out in official records. Therefore the Holy See and San Marino are entitled to be invited to the Conference and it is for their Governments to decide whether they will participate fully or be represented by observers.

27 August 1971

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[44] *Official Records of the Economic and Social Council, Fiftieth Session, Supplement No. 3* (E/4984), para. 128.

20. Question whether the administrative costs of the United Nations volunteers programme can be paid from the special voluntary fund established by General Assembly resolution 2659 (XXV)

Note to the Coordinator, United Nations Volunteers, United Nations Development Programme

1. The question on which a legal opinion has been requested is whether the administrative costs of the United Nations Volunteers Programme can be paid from the special voluntary fund established by operative paragraph 4 of General Assembly resolution 2659 (XXV) of 7 December 1970.

2. Operative paragraph 4 of General Assembly resolution 2659 (XXV) reads as follows:

> "4. *Invites* Governments of States Members of the United Nations and members of the specialized agencies, international non-governmental organizations and individuals to contribute to a special voluntary fund for the support of the activities of the United Nations Volunteers."

By the same resolution the Secretary-General was requested to designate the Administrator of the United Nations Development Programme as the Administrator of the United Nations Volunteers. Subject to the broad guidelines in the preamble and operative paragraphs of the resolution, it would seem clear that the Assembly intended to vest in the Administrator wide discretion in regard to the execution of the Volunteers Programme. He is, however, to report, in conjunction with the Secretary-General, to the General Assembly at its next session on the experience gained, and to make proposals to enable the Volunteers to serve better the aims in view. There is thus an opportunity for the Assembly to decide again on final arrangements for the Programme, after a year's experience.

3. The purpose of the fund is said to be "for the support of the activities of the United Nations Volunteers". The ordinary meaning of the word "support" includes administrative costs as well as such costs in the field as will be paid through the United Nations. On the face of the resolution, therefore, it appears that the Administrator could properly decide to pay administrative costs from the voluntary fund.

4. The preparatory work of the resolution does not modify this interpretation. The Secretary-General submitted to the Economic and Social Council at its forty-ninth session a note on the financial implications of the United Nations Volunteers Programme (E/L.1348). This note stated:

> "3. In accordance with rule 34 of the Rules of Procedure of the Council, the Secretary-General wishes to advise the Economic and Social Council that, inasmuch as the financial support of the voluntary programme, including the appointment of a co-ordinator within the framework of UNDP, would be provided from the Trust Fund, no financial implications would be involved as far as the regular budget of the United Nations is concerned. . . ."

5. The Secretary-General thus expressed the understanding that the "financial support" of the programme would come from the special voluntary fund, and it was also made explicit that the costs resulting from the appointment of a co-ordinator would also be borne by the fund. If the co-ordinator is to be paid from the fund, it would be natural that the costs of his staff and of his office be paid from the same source.

6. In the ensuing debate in the Council and in the General Assembly, several delegations mentioned the financial aspects of the programme, but did not deal very specifically with the administrative costs. There is nothing in the debates to vary the ordinary meaning of the word "support" as used in the resolution, or the understanding stated in the Secretary-General's note.

7. It therefore follows that the administrative costs of the United Nations Volunteers Programme can be borne by the special voluntary fund.

21 May 1971

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21. The respective spheres of application of the procedure for the registration of treaties with the Secretariat and the filing and recording procedure—The purposes of the two procedures

Note addressed to the Office of the Permanent Observer of a non-member State

1. The registration of treaties or international agreements with the Secretariat provided for in article 1 of the regulations to give effect to Article 102 of the Charter [General Assembly resolution 97 (I), as amended by resolutions 364 B (IV) and 482 (V)], applies to instruments to which a State Member of the United Nations is a party; it may be effected by any party and is obligatory for a Member State and optional for a non-member State. [45] Filing and recording, as provided for in article 10 of the regulations, which, like registration, has in view the publication of treaties and international agreements, applies only to treaties or agreements concluded between States not members of the United Nations, in addition to treaties and international agreements transmitted by a Member State which were entered into before the coming into force of the Charter and treaties and international agreements entered into by the United Nations or by one or more of the specialized agencies. Consequently, the filing and recording procedure is not open to non-member States where a Member State is a party to the agreement. Similarly, the registration procedure cannot be used in the case of an agreement to which no State Member of the United Nations is a party. It should, however, be emphasized that the registration procedure and the filing and recording procedure are subject to rules and conditions which are comparable in all respects.

2. The only difference between the two procedures, apart from the fact that registration is obligatory for Member States, relates to the penalty attaching to that obligation; Article 102 (2) of the Charter provides that an international agreement which has not been registered may not be invoked before any organ of the United Nations. However, this penalty could also be applied to a non-member State party to a treaty concluded with a Member State if the latter failed to register (or delayed in registering) the instrument with the Secretariat.

3. In the present state of international relations, the great majority of treaties and international agreements entered into by non-member States are concluded with Member States; as a result, filing and recording is becoming a rare procedure from the standpoint of non-member States, and the penalty provided in Article 102 of the Charter is becoming universal in scope and embracing non-member States. For that reason, registration offers definite advantages for non-member States, particularly those which are parties to the Statute of the International Court of Justice, and especially if they have recognized the compulsory jurisdiction of the Court.

4. The attitude of non-member States towards the registration or the filing and recording of treaties or international agreements to which they are parties cannot and should not be exclusively dictated in any sense by concern with avoiding the possible application of the penalty provided under Article 102 of the Charter. The basic purpose of that Article, which was also that of Article 18 of the Covenant of the League of Nations, is not so much registration as such, which is merely an agreed arrangement for confirming the existence of

[45] See *Repertory of Practice of United Nations Organs*, vol. V, pp. 311-312.

international agreements, as it is the publication of the agreements. That should be borne in mind by non-member States concerned about the development of international law.

5. These observations apply to treaties or international agreements regardless of whether they are bilateral or multilateral. With regard to the latter category, however, it should be noted that, at the second and third sessions of the General Assembly, a technical question concerning the registration of multilateral treaties was raised in the Sixth Committee. [46] At those two sessions, the Secretariat argued that it would be desirable for multilateral agreements to be presented for registration by the Government having the custody of the original document and that that Government should also register all subsequent actions relating to the agreement in question, since that procedure offered the advantage not only of facilitating the work of the Secretariat but also of avoiding duplication in the measures taken by the Governments concerned. The procedure in question, having given rise to no objection, has now become the normal practice.

3 June 1971

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22. Practice of the Secretary-General with regard to the registration of treaties by intergovernmental organizations other than the United Nations and the specialized agencies

Letter to the Legal Adviser of the European Space Research Organization

With regard to the registration by your organization of the Protocol concerning its privileges and immunities signed on 31 October 1963, which entered into force on 18 March 1965, I should like to draw your attention to the provisions of the regulations adopted by the General Assembly to give effect to Article 102 of the Charter. [47] Under article 4 of these regulations, provision is made for the registration of treaties and international agreements by an entity other than one of the parties only in the case of the United Nations and the specialized agencies—where certain conditions must nevertheless be met—to the exclusion of any other international organization. The practice of permitting registration by an intergovernmental organization has, however, been established in cases where the organization in question, in its capacity as depository of the treaty, has been expressly authorized to register the treaty either in the treaty itself or in some other manner, e.g. in a resolution of the competent body in which the contracting parties are represented. It is entirely possible for such authorization to cover all treaties or only certain ones concluded within the framework of the organization and deposited with it. The basis for this practice lies in the fact that when such authorization is granted, the Secretariat can regard the registration requested as equivalent to registration by the contracting parties themselves.

Accordingly, unless the authorization in respect of your organization is contained in the text of the Protocol itself, we should be grateful if you would attach to that instrument the text of the relevant decision. [48]

18 February 1971

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[46] See *Official Records of the Second Session of the General Assembly, Plenary Meetings of the General Assembly*, vol. II, annex 19, pp. 1564-1565, and *ibid., Sixth Committee*, 54th meeting; *Official Records of the Third Session of the General Assembly, Part I, Plenary Meeting of the General Assembly, Annexes*, pp. 61-64 and 300-301, and *ibid., Sixth Committee*, 79th and 80th meetings.

[47] See General Assembly resolutions 97 (I), 364 B (IV) and 482 (V).

[48] The Protocol was registered by the French Government, as depositary, before receipt of the reply from the Legal Adviser of the European Space Research Organization.

23. Position of the Secretary-General regarding possible reservations to multilateral conventions concluded under the auspices of the League of Nations the custody of which has been accepted by the Secretariat under General Assembly resolution 24 (I)

Note verbale *addressed to the Permanent Representative of a Member State*

The Secretary-General of the United Nations has the honour to acknowledge receipt of the Permanent Representative's note transmitting his country's instrument of accession to the Convention concerning the Use of Broadcasting in the Cause of Peace, signed at Geneva on 23 September 1936. [49]

The said instrument of accession contains the following two reservations:

(1) The Member State in question declares that it "will not consider itself bound by the provision of article 7 of the Convention calling for consideration of disputes between the Parties by the International Court of Justice at the request of one of them. Any decision rendered by the Court concerning a dispute between [that State] and another Party to the Convention on the basis of a request submitted to the Court without the consent of [that State] shall be deemed invalid".

(2) The Member State in question declares that it "will apply the principles embodied in the Convention in relation to all States Parties to the Convention on the basis of reciprocity. The Convention will not, however, be interpreted as establishing formal commitments between countries which do not maintain diplomatic relations".

The Secretary-General acts as depositary of conventions concluded under the auspices of the League of Nations in accordance with a resolution adopted by the Assembly of that organization at its last session and a resolution [24 (I)] of the United Nations General Assembly under which "the United Nations is willing to accept the custody of the instruments and to charge the Secretariat of the United Nations with the task of performing for the parties the functions, pertaining to a secretariat, formerly entrusted to the League of Nations". In exercising these functions, the Secretary-General continued to follow the practice of the League of Nations, which he also applied, initially, with respect to conventions concluded under the auspices of the United Nations. In the event that an instrument of ratification or accession was deposited together with one or more reservations, the practice was the following: before the instrument was deposited, the text of the reservation was communicated to the contracting parties. If there was no objection, the reservation was deemed to have been accepted and only then was the instrument deposited with the Secretary-General. If one or more of the parties raised any objection to the reservation, the Government concerned was requested to withdraw its reservation; if it did not, the Secretary-General was unable to accept the instrument for deposit.

In the case of all conventions not containing contrary provisions of which he was the depositary, the Secretary-General followed that practice until 12 January 1952, when he was requested by the General Assembly (resolution 598 (VI)), "In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary: (i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and (ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications".

[49] *League of Nations, Treaty Series*, vol. 186, p. 301.

Subsequently, in resolution 1452 B (XIV) of 7 December 1959, the General Assembly requested the Secretary-General to extend that practice to all conventions concluded under the auspices of the United Nations which did not contain provisions to the contrary.

That resolution, however, did not apply to conventions concluded under the auspices of the League of Nations, which, except for those amended specifically with regard to the transfer of depositary functions by a protocol concluded under the auspices of the United Nations, continue to be covered by the abovementioned General Assembly resolution (24 (I)) concerning the transfer of certain functions pertaining to a secretariat, which do not relate to the substantive rights and obligations of the parties. A draft resolution concerning the practice to be followed in respect of all conventions of which the Secretary-General is the depositary—and consequently all League of Nations conventions—was submitted to the General Assembly at its fourteenth session but was not adopted. [50] During the debates only a few delegations referred to the problem posed by such conventions, and opinions were divided; some held that the rule contained in resolutions 598 (VI) and 1452 B (XIV) should be applied, while others were in favour of maintaining the practice of the League of Nations.

With regard to the instrument of accession accompanied by reservations, which is the subject of this note, it is to be noted that this is the first time since the adoption in 1959 of the resolution cited above that a State has formulated a reservation to a convention concluded under the auspices of the League of Nations which does not contain provisions relating to reservations. It is impossible to draw any indisputable legal conclusion concerning the rule to be followed in this case from the decisions and debates of the General Assembly. However, the Secretary-General, acting as depositary, cannot infringe upon the rights of the parties, some of which would probably raise serious objections if, without instructions from the General Assembly, he were now to apply for the first time a procedure different from that of the League of Nations with regard to a convention concluded under the latter's auspices. The Secretary-General is consequently unable to accept the instrument of accession in question for deposit without first taking certain steps. He will therefore inform the States concerned of the receipt of the instrument of accession and the text of the reservations. Those States will be requested to inform the Secretary-General of their attitude regarding the reservations within the usual 90-day time-limit and to state whether they have any objection to the deposit of the instrument. In the absence of any objection deemed by the State which has raised it as constituting an obstacle to the entry into force of the Convention in respect of the Member State that formulated the reservations, the instrument will be accepted for deposit at the end of the 90-day period and, in accordance with article 12 of the Convention, will take effect 60 days after that date.

Should any difference of opinion arise between the Secretary-General and the Member State concerned or one or more of the parties to the Convention regarding the procedure to be followed with respect to reservations to conventions concluded under the auspices of the League of Nations, the Secretary-General will not fail to bring the question to the attention of the General Assembly so that it may provide him with the necessary clarification concerning the views of the international community as to the law applicable in the matter.

3 December 1971

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[50] See *Officials Records of the General Assembly, Fourteenth Session, Annexes*, agenda item 65, document A/4311, para. 20.

24. Multilateral treaties in respect of which the Secretary-General performs depositary functions—Participation of Member States to such treaties—Notifications of succession

Letter to the Permanent Mission of a Member State

1. I write in reply to your letter concerning the position of your country in respect of the multilateral treaties deposited with the Secretary-General of the United Nations.

2. I should like to refer you, in this regard, to the United Nations publication *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions, List of Signatures, Ratifications, Accessions, as at 31 December 1970* (ST/LEG/SER.D/4). [51] This publication covers all multilateral treaties which have been concluded under the auspices of the United Nations or its specialized agencies and the original of which have been deposited with the Secretary-General, as well as certain League of Nations treaties and pre-United Nations treaties referred to in paragraphs 5 to 7 of the introduction to the said publication. It likewise includes the Charter of the United Nations, in respect of which certain depositary functions have been conferred on the Secretary-General, although the authentic text of the Charter is deposited with the Government of the United States of America. All these treaties are enumerated in the table of contents of the publication, pp. v to xiv. The publication provides the information on the status of each of the treaties dealt with therein as at 31 December 1970.

3. I wish also to refer you to the Annex to the said publication, which was issued in a separate volume in loose-leaf form (ST/LEG/SER.D/1, annex and *Supplements Nos. 1 and 2*) giving the final clauses of all treaties concerned, including the clauses setting forth the method whereby States may become parties thereto.

4. It will be recalled that, together with the application for membership in the United Nations, the Government of your country submitted to the Secretary-General, pursuant to rule 135 of the rules of procedure of the General Assembly, a declaration accepting the obligations contained in the Charter of the United Nations. Upon admission to the United Nations your country has thus become bound by the Charter of the United Nations, as amended by General Assembly resolution 1991 A and B (XVIII) of 17 December 1963, the amendments concerned (to articles 23, 27 and 61) having entered into force pursuant to Article 108 of the Charter in respect of all Members on 1 March 1966. It has since become bound also by the amendment to Article 109 of the Charter, which was adopted by General Assembly resolution 2101 (XX) of 20 December 1965 and which entered into force for all Members on 12 June 1968.

5. As of the date of its admission to the United Nations, your country has become *ipso facto* a party to the Statute of the International Court of Justice, in accordance with Article 93 of the Charter. It has not yet taken action under paragraph 2 of Article 36 of that Statute, according to which States parties to the Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligations, the jurisdiction of the International Court of Justice in all legal disputes concerning the matters referred to in that paragraph. Such declarations may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time, and shall be deposited with the Secretary-General. You will find on page 9 of the above-mentioned publication a list of States which have made such declarations, followed by the text of the declarations themselves.

[51] United Nations publication, Sales No. E.71.V.5.

6. As a Member of the United Nations, your country is entitled to become a party to all treaties covered by the publication mentioned earlier in this letter, except for those treaties which have ceased to be in force and those which are either regional in scope or in which participation is otherwise restricted. It may do so, according to the pertinent final clauses, either by signature followed by ratification, or by accession, or in respect of the treaties which are no longer open for signature, by accession. There are also some treaties to which States may become parties either by signature without reservation as to acceptance (definitive signature), or signature subject to acceptance followed by acceptance, or by acceptance. The originals of all treaties are deposited in the archives of the Secretariat and those of them that are still open for signature may be signed on behalf of your Government at the Headquarters of the United Nations by its representative duly authorized to this effect in full powers.

7. Your country may also become a party to certain of the treaties referred to above by virtue of succession, namely those to which the United Kingdom of Great Britain and Northern Ireland is a party and which, either were made applicable by it pursuant to their territorial clause to the whole or part of the territory now forming your country or were considered, in the absence of such a clause, as applying thereto. In this connexion, I wish to invite your attention to the practice which has developed regarding the succession of new States to the rights and obligations arising out of multilateral treaties applied in their territory, prior to the attainment of independence, by States formerly responsible for their foreign relations. Under this practice, the new States generally acknowledge themselves to be bound by such treaties through a formal notification addressed to the Secretary-General. The effect of such notification, which the Secretary-General in the exercise of his depositary functions communicates to all interested States, is to consider the new State as a party in its own name to the treaty concerned as of the date of independence, thus preserving the continuity of the application of the treaty in its territory. A more detailed description of this practice may be found in the *Yearbook of the International Law Commission, 1962*, vol. II, reproducing document A/CN.4/150, which contains a memorandum prepared by the Secretariat on the succesion of States in relation to general multilateral treaties deposited with the Secretary-General.

8. Ratification, accession, acceptance or succession are all acts by which a State establishes, on an international plane, its consent to be bound by a treaty. Such acts are carried out by deposit with the Secretary-General of an appropriate instrument or notification. The consent of a State to be bound by a treaty may also be expressed by the signature alone where a treaty—as mentioned in paragraph 6 above—provides that States may become parties by signature without reservation as to ratification, acceptance or approval (definitive signature). In accordance with established international practice, an instrument of ratification accession, acceptance, or a notification of succession should be made in a formal document emanating from and bearing the signature of the Head of State or Government or the Minister for Foreign Affairs. The full powers issued to a representative for the purpose of signing a treaty should likewise emanate from one of these authorities and, where appropriate, should expressly confer on him the powers to affix a definitive signature.

9 March 1971

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25. Conditions under which a State may accede to the Agreement establishing the African Development Bank [52]—Form of the instrument of accession

Letter to the Vice-President of a Member State

I have the honour to acknowledge the receipt of your cable confirming that your government has applied for membership in the African Development Bank.

[52] United Nations, *Treaty Series*, vol. 510, p. 46.

Paragraph (2) or article 64 of the Agreement Establishing the African Development Bank, done at Khartoum on 4 August 1963, provides: (*a*) that States which do not acquire membership of the Bank in accordance with paragraph (1) of that article (i.e. States other than signatory States which deposited their instruments of ratification or acceptance of the Agreement before 1 July 1965), may become members by accession to the Agreement on such terms as the Board of Governors of the Bank shall determine; (*b*) that the Government of any such State shall deposit, on or before a date appointed by that Board, an instrument of accession with the Secretary-General of the United Nations; and (*c*) that upon the deposit the State shall become member of the Bank.

Among the terms of accession to be determined by the Board of Governors in accordance with articles 6 (1) and 7 (3), respectively, of the Agreement are: the initial number of shares of the capital stock of the Bank to be subscribed by acceding States and the dates for the payment of amounts subscribed to the paid-up capital stock. Normally, under the terms of accession, the payment of the first instalment of the subscription to the paid-up capital stock is required on or before the date appointed by the Board for the purpose of paragraph (2) of article 64.

Accordingly, after the terms of accession for your country have been established by the Board of Governors, your Government should proceed with the payment to the Bank of the first instalment of its paid-up subscription and the deposit with the Secretary-General of the United Nations of its instrument of accession, both actions to be taken not later than the appointed date. With a view to expediting the procedure, the instrument may be transmitted to the Secretary-General in advance of the payment of the first instalment, in which case the Secretary-General will retain the instrument and will receive it formally in deposit immediately upon confirmation from the Bank that the first instalment of subscription has been paid. With the procedure described above thus completed, your country will become a member of the Bank on the appointed date, in accordance with article 64 (2) of the Agreement.

As regards the form of the instrument of accession, it will be noted that, according to the recognized international practice which the Secretary-General feels obliged to follow, such instrument must be executed either by the Head of State or Government or by the Minister of Foreign Affairs and must contain an expression of the will of the Government on behalf of the State, to be bound by the Agreement.

12 July 1971

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Labour Office

The following memorandum concerning the interpretation of an international labour Convention was prepared by the International Labour Office at the request of a government:[53]

Memorandum on the Equality of Treatment (Social Security) Convention, 1962 (No. 118), prepared at the request of the Government of the Netherlands, 2 November 1971. Document GB.186/15/3; 186th session of the Governing Body, Geneva, May-June 1972.

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[53] This memorandum will be published in the *Official Bulletin*, vol. LV, 1972.

2. Food and Agriculture Organization of the United Nations

Status of Associate Members of FAO—Assessment of contributions of Qatar and Bahrain to budget for period between declaration of independence and admission to full membership

Opinion submitted by the Legal Counsel to the Deputy Controller

1. I wish to refer to your memorandum of 12 October 1971 in which you ask for advice regarding the present membership status of Bahrain and Qatar in order to determine the financial implications of their applications for membership in the Organization. Bahrain and Qatar were admitted as Associate Members of the Organization by the Conference at its Fourteenth Session (1967) and attained independence on 15 August 1971 and 1 September 1971 respectively. Both Bahrain and Quatar have applied for full membership in the Organization and their applications will be considered at the Sixteenth Session of the Conference in November this year.

2. Under paragraph 3 of Article II of the Constitution only territories which are not responsible for the conduct of their international relations when an application is made on their behalf may be admitted as Associate Members.

3. There is no provision in the Consititution or the General Rules of the Organization laying down that, upon attainment of independence, an Associate Member automatically and as of the date of independence, ceases to be an Associate Member. In the absence of such express provision and bearing in mind that the status of a territory may be subject to controversy, it would not seem appropriate for the Director-General to make a determination on his own initiative on the question whether a territory had attained independence. Nor would it be appropriate for him to draw any consequences flowing therefrom. Instead, it is for the Conference, which is vested with the power to admit new Members and Associate Members, to make such a determination if necessary. It would appear that until such a determination has been made, associate membership is deemed to continue.

4. Past FAO practice confirms the above conclusion. It will be recalled that Chad, Gabon, the Malagasy Republic, Mali and Senegal were admitted to associate membership by the Tenth Session of the Conference in 1959. No provision was made at the time whereby the status of these territories would automatically be converted from associate membership to full membership when they became independent and deposited an instrument of acceptance of the Constitution—although this has been done in the case of other Associate Members who were soon to become independent. These five territories were subsequently admitted to full membership by the Eleventh Session of the Conference in 1961. However, they all became independent between June and September 1960 and were all admitted to membership in the United Nations in September 1960. Their independence was therefore clearly recognized when they became members of the United Nations, but they nonetheless remained Associate Members of FAO for more than a year afterwards—i.e. until the Conference admitted them to full membership in November 1961.

5. A resolution adopted by the World Health Assembly of WHO is also relevant in the above connection. By Resolution WHA 14-45 entitled "Rights and Obligations of Associate Members having attained Independence" [54] the World Health Assembly decided at its Fourteenth Session in 1961 that

> "Associate Members which have attained independence and which expressly state their intention of becoming full members of the Organization shall, during the transitional period which must necessarily elapse before they can become members of the Organization, continue to enjoy the rights and privileges of associate membership".

[54] Official Records of the World Health Organization, No. 110, part I, p. 19.

6. If an Associate Member which has apparently become independent does not apply for membership at the Session of the Conference following its independence, the question of its status may always be raised at the Conference either by Member Nations or by the Director-General. However, this is not the case with respect to Bahrain or Qatar.

7. In conclusion, assuming that Bahrain and Qatar are admitted to full membership at the forthcoming Conference they should continue until that date to be considered as Associate Members. For the purposes of contributions to the budget, they should be assessed as Associate Members for the first three quarters of 1971 and, in accordance with Financial Regulation 5.8, as full members for the last quarter.

26 October 1971

3. Universal Postal Union

Study by the International Bureau on the reservations to the Acts of the Union [55]

I. *Introduction*

1. The International Bureau was instructed in 1970 to make a study on the customary practice followed in regard to reservations and on the specific practice of the Universal Postal Union. This new study forms part of the work assigned to the Executive Council by the 1969 Tokyo Congress in resolution C 44. [56] The work connected with the conditions under which reservations may be made in the Final Protocol to the Parcel Post Agreement (see Vienna Congress resolution CP. 2) was completed by the previous Executive Council and ratified by the 16th Congress.

2. It will be recalled that as a result of this first study, reservations of a general and permanent nature and certain reservations concerning regulations were transferred from the Final Protocol of the Parcel Post Agreement into the Agreement itself, and the same was done with certain reservations concerning insured letters and boxes (see proposals 5000-5003, 6022-6024, 6029-6035 and 6041). On the other hand reservations about rates and those which concerned a small number of countries, or which were of a very special nature, were retained in the Final Protocols in question.

3. Conscious of the need to maintain as far as possible a certain degree of uniformity in the presentation of the Acts of the Union, the Executive Council then looked into the possibility of proceeding on similar lines in regard to reservations to the Convention and the other Acts. An initial scrutiny showed that owing to the compulsory nature of the Convention it was difficult to proceed by simple analogy. The Executive Council therefore proposed to the Tokyo Congress that a full and exhaustive study of the matter should be made by the present Council. The British administration supported this view by submitting a statement, published as Congress - Doc 31, which stressed the desirability of studying the problem of reservations in relation to the general and current practice of public international law. This idea was included in the resolution from which the Committee's mandate stems.

4. The problems arising in connexion with the present study are thus of two kinds. It is necessary to know:

(i) how far UPU practice differs from the general practice of public international law and, in consequence, whether the UPU should bring its practice into line with that general-

[55] Submitted to Committee 3 (General Committee) of the Executive Council under the symbol CE/C.3 - Doc. 19.

[56] See *Juridical Yearbook*, 1969, p. 121.

ly in force at the present time—in particular, with the provisions of the Convention on the Law of Treaties concluded at Vienna in 1969; [57]

(ii) whether the changes made by the 1969 Tokyo Congress to the reservations concerning parcel post and insured letters and boxes should be applied by analogy to the Convention and to the other Acts of the Union.

II. *Reservations in the general practice of international law in the UPU*

A. *Reservations in the general practice of public international law*

5. The above-mentioned Convention of Vienna defines the word "reservation" as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby its purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (article 2, paragraph 1 (*d*) of the Convention). More succinctly, it may be said that a reservation is a provision which derogates from the general legislation.

6. The use of reservations, which is now very common, has developed in step with the proliferation of international treaties and the evolution of procedures for concluding them. Wishing to increase the number of parties to a treaty, the contracting States consented to some of them not applying one or other of the dispositions of that treaty. Moreover, the majority rule relating to the conclusion of treaties sometimes imposes on the minority provisions which are deemed unacceptable for the latter.

7. This system of exceptions attacks the fundamental principle of integrity of a treaty whereby the rights and obligations flowing from the latter are the same for all the parties. The admissibility of the system is thus dictated by considerations of opportunism or legal policy. This partly explains why doctrine in the matter has undergone a well-nigh revolutionary development. At the present time several practices, based on several doctrines, are current. We shall summarize them here, while stressing the fact that each treaty may, and indeed should, settle the problem of reservations on its own account; many treaties do in fact make use of this opportunity. The rules discussed below are only applicable if the treaty contains no provision on the subject of reservations (and objections thereto).

8. Broadly speaking, doctrine and practice agree in accepting that reservations can only be made when a State commits itself provisionally or definitively to a treaty, i.e. at the time when it signs, ratifies, accedes to or accepts the treaty. The UPU is, however, more restrictive in this field, as we shall explain under B below.

9. The procedure governing acceptance of reservations has evolved a great deal. The four following doctrines, among others, may be distinguished:

(a) *Classical doctrine and practice*

10. Classical doctrine and practice require reservations to be accepted by all the contracting parties. According to this practice, which is the oldest one and is based on the classical method of concluding treaties, preferential conditions may not be granted to a State without the unanimous consent of all the parties bound by the treaty. The reservation thus becomes, in one form or another (in the treaty itself or in its final protocol) an integral part of the treaty in question.

11. However well-founded it might be in law, this theory gave rise to serious difficulties of application in the case of treaties to which there were a large number of contracting parties. For this reason new theories arose which aimed to demonstrate that a reservation, in order to be valid, did not require unanimous acceptance.

[57] *Official Records, of the United Nations Conference on the Law of Treaties, Documents of the Conference* (A/CONF.39/11/Add.2, Sales No. E.70.V.5), p. 289.

(b) *Pan-American doctrine and practice*

12. The pan-American practice flourished within the Organization of American States, hence its name. It is based on the following two principles:

"1. The consent of the other parties to the treaty remains, in principle, the condition for the validity of any reservation, the unanimous rejection of which would inevitably make it null and void, i.e. would entail the withdrawal of the party to the treaty which made the reservation.

"2. Although consent is necessary, it need not be unanimous. If certain States do not object to it, the reservation is admitted and the quality of party to the treaty is established. The sole effect of an objection is that the treaty does not come into force between the reserving and the objecting States."

13. Despite the opposition it met from the defenders of the classical practice who charged it with failing to respect the equilibrium and integrity of the treaty by making a multilateral treaty into a series of bilateral treaties, the pan-American practice was destined to become very widely accepted because, responding to the dynamism of codification at international level, it provided a valid, practical and logical solution to a problem vis-à-vis which the classical rule found itself in an impasse. The pan-American practice now governs the treatment of reservations in a number of treaties; since 1952 it has been associated with the classical rule in a practice instituted by the United Nations in connexion with the Convention on the Prevention and Punishment of the Crime of Genocide. [58]

(c) *The doctrine of "contractual freedom"*

14. Mention should be made at this point of the doctrine which maintained that any State can formulate reservations irrespective of the reaction of the other parties and while remaining a party to the treaty. This doctrine, which emphasized the sovereign right of the reserving State, was never applied in practice; but, supplemented by the recognition of the same sovereign right of a party to the treaty to object to the reservations, it contributed to the solution of the problem of the legal effects of reservations (and objections thereto) in the present legislation referred to below (see (*d*)).

(*d*) *Doctrine and practice adopted at the United Nations Conference on the Law of Treaties, Vienna, 1968 and 1969* (Convention of Vienna on the Law of Treaties)

15. According to the Convention on the Law of Treaties (articles 20 and 21), [59] the legal effects of a reservation and of an objection thereto differ according to the subject of the reservation:

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[58] Wishing to put an end to the disputes which frequently arose about the validity of the practice applied by the Secretary-General of the United Nations in respect of treaties for which he acted as a depositary, the General Assembly of the United Nations, by resolution 478 (V), asked the International Court of Justice and the International Law Commission for an opinion on the problem. While the Commission came out in favour of maintaining the classical theory, (see *Official Records of the General Assembly, Sixth Session, Supplement No. 9*), the International Court of Justice pronounced a theory which resembled the pan-American doctrine and which was adopted as general practice by the Assembly (see resolution 598 (VI)), although the Court had emphasized the essentially practical nature of the questions raised and their specific application to the Convention in question (see *I.C.J. Reports 1951*, p. 15).

[59] *Article 20* of the Convention reads as follows:

"1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

"2. When it appears from the limited number of the negotiating States and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

"3. When a treaty is a constituent instrument of an international organization and unless it

(1) If the reservation affects the object and purpose of the treaty or if the application of the treaty in its entirety is an essential stipulation of the contracting parties, the reservation requires acceptance by all the parties (see article 20, paragraph 2 of the Convention—classical practice).

(2) In cases other than those mentioned in (1) above (and except where the treaty is a constituent instrument of an international organization, for which a special procedure is provided), the reservation remains valid even if some of the contracting parties object to it. It does not preclude the entry into force of the treaty as between the reserving and objecting States; only if the objecting State definitely expresses such an intention are the legal relations stemming from the treaty between the reserving and objecting States not established (see article 20, paragraph 4 (*b*) of the Convention). Otherwise it is only those provisions to which the reservation relates which do not apply as between the two States in question, to the extent of the reservation (see article 21, paragraph 3). It will often be difficult to know to which of these two categories certain reservations belong.

B. *Reservations in the practice of the UPU*

16. The only provision of the UPU Acts dealing with reservations is that of article 22, paragraph 6 of the Constitution, [60] according to which reservations are inserted in the Final Protocols. This provision enshrines the principle whereby reservations are admitted only at the time of signature and must have received the prior sanction of Congress. Adopted by the Vienna Congress in 1964, the said provision ratifies a continuous practice which dates back to the origins of the Union and was first enshrined in a formal opinion expressed by the 1929 London Congress.

17. The signatories are not able to formulate reservations at the time of ratification. If, however, they find it absolutely essential to formulate a new reservation after the Acts

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otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

"4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

"(*a*) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

"(*b*) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

"(*c*) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

"5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later."

Article 21 of the Convention reads as follows:

"1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(*a*) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

"(*b*) modifies those provisions to the same extent for that other party in its relations with the reserving State.

"2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."

[60] United Nations, *Treaty Series*, vol. 611, p. 7.

have been signed, they may have recourse to the procedure for amending the Acts between Congresses and have the desired additions made to the Final Protocols. However, the conditions of approval are extremely severe since they require a unanimous vote.

18. In the case of accession of a new member country, UPU practice exhibits some degree of flexibility. It accepts, for example, that new member countries may ask to benefit from reservations which their territories enjoyed before independence when they were within the jurisdiction of the Union. It has gone even further by accepting that a new member country may also be accorded the benefit of a reservation which was not previously directly applicable to it but existed in favour of the entity of which the new country formed a part. On the other hand it is not possible at the time of accession to make a reservation which is enjoyed by no other member country.

C. *Desirability of a change in UPU practice*

19. As we have seen, there are substantial differences between UPU practice and the general practice in regard to reservations. The Union adheres neither to the classical practice in its entirety, nor to the pan-American practice, nor to the practice codified by the 1969 Convention of Vienna. Under the system peculiar to it, reservations must be approved by Congress and inserted in the Final Protocols to the Acts. This precludes the possibility of formulating reservations at the time of ratification on approval, and even, with certain exceptions (see paragraph 20 below), at the time of accession or admission to the Union.

20. A few concessions have, however, been made for cases of admission and accession to the Union. It has been accepted that reservations applicable to a country before its independence should remain applicable to that country after it has been admitted as a member of the Union. While this practice is justified by the desire to ensure that the new member country is as favourably placed as it was previously, it is not sactioned by an express provision.

21. It may therefore be said that the special procedure in force within the UPU provides both a control and a brake which appreciably limits the use of reservations. From the viewpoint of international postal exchanges this practice is highly satisfactory. It combats, indirectly, the abuse of reservations while admitting them by a procedure which guarantees that the other contracting countries have the opportunity to state their view on them and to approve them formally by signing the Final Protocol. The UPU practice also respects the interest which member countries' postal administrations have in knowing sufficiently in advance of the entry into force of the Acts signed at a Congress the conditions governing international postal exchanges. Even so, it is unfortunate that article 22, paragraph 6 of the Constitution is not more explicit. In our view it would be desirable to define the application of this provision more clearly, especially for cases of admission and accession, so as to ratify a long-standing and fully justified practice.

III. *Transfer to the Convention and various agreements of reservations appearing in the Final Protocols to these Acts*

22. As we recalled in the introduction, the Committee's mandate also consists in examining whether, by analogy with the action taken at the Tokyo Congress in regard to the reservations concerning postal parcels and insured letters and boxes, similar transfers could be made in the case of the reservations relating to the Convention and the optional Acts of the UPU other than the aforementioned Agreements.

23. In this connexion, a clear distinction should be drawn between the general reservations applicable to all the member countries of the Union and those applicable to a more or less restricted number of member countries.

24. The former do not, strictly speaking, correspond to the definition of a reservation. They are, rather, optional clauses of general scope which are included in the Final Protocols to the Acts in order to highlight the exceptional and restricted use, depending on a clearly defined situation, that is to be made of them. [61]

25. Whether a provision of this kind is inserted in the Convention or in the Final Protocol thereto is thus determined by considerations of opportunism—or, more precisely, of policy—in regard to international postal relations, expressed through legal means.

26. The problem on a very different aspect when we come to consider reservations that are applicable to a more or less restricted number of member countries, for the transfer of such reservations into the body of the Act completely alters their nature. They lose their character as reservations and become provisions of which any member country in a given situation can avail itself. Their terms must be altered accordingly, as it is impossible for a provision of the main Act to list the member countries that may benefit from it.

27. The effect of this procedure is, moreover, to establish within the body of an Act, side by side with the general practice, another practice of an equally official character. This legal situation is, however, contrary to the spirit of uniformity of the conditions governing international postal exchanges. In other words, instead of having one general practice with a few agreed exceptions, we find ourselves with two or three parallel systems.

28. In this connexion one cannot help thinking that precisely such objections could have been made regarding certain transfers effected by the previous Executive Council in respect of postal parcels. However, we must admit that those transfers were of no real consequence. They were not liable to appear obviously out of place, as the reservations in question seemed unlikely to be applied by a greater number of countries than at present; essentially, they were concerned with certain relatively unimportant features peculiar to the Anglo-Saxon system.

29. Lastly, the fundamental importance and compulsory nature of the Universal Postal Convention should be borne in mind. This argues in favour of maintaining regulations that are as uniform as possible. The snags we have pointed out in paragraphs 27 and 28, which could result from the transfer to the Convention of certain reservations appearing in the Final Protocol, ought to be avoided. It must be admitted, however, that some transfers are possible and even desirable, and the steps already taken in regard to parcels and insured letters and boxes cannot be ignored.

IV. *Conclusions*

30. With regard to the two questions underlying this study as set out in paragraph 4, the International Bureau considers that:

(1) the practice followed hitherto by the UPU in regard to reservations still remains fully justified. If it is more restrictive than the general practice of public international law, in particular that codified by the Convention on the Law of Treaties, this is not a defect but a positive quality and an advantage, since the use of reservations must be restricted as far as possible so as not to prejudice the uniform application of the provisions of a treaty.

[61] By way of example we may cite article II of the Final Protocol to the 1964 Vienna Convention (United Nations, *Treaty Series*, vol. 611, p. 105). This article gives administrations which do not concede exemption from postal charges to literature for the blind in their internal service the option of collecting certain charges which may not exceed those in their internal service. A reservation of this kind can undoubtedly be transferred to the Convention. If, however, the legislator — i.e. Congress — decided otherwise, it was precisely in order to endow such collection of charges with a very exceptional character and not to weaken the principle of exemption from charges enshrined in article 9 of the Convention.

This practice is, moreover, safeguarded by the Convention on the Law of Treaties (see article 5); [62]

(2) a few details could usefully be added to the existing provisions so as to regulate more fully or, more precisely, to ratify the practice adopted for formulating reservations at the time of accession or admission to the Union;

(3) as regards the possibility and desirability of taking action, in respect of the Convention and certain Agreements, on the lines of that taken at the Tokyo Congress with regard to the reservations concerning postal parcels and insured letters and boxes, the greatest circumspection is essential because this would involve the risk of making the application of certain reservations universal and of giving an official character to the parallel existence of several systems, which runs counter to the uniformity of legislation normally sought through the adoption of a treaty. The Tokyo precedent requires, however, that a detailed examination should be made of the reservations in question. But that is going beyond the scope of this document. It would accordingly be necessary for the Committees concerned to examine each reservation separately in the light of the principles set out in section III of the present study. An inter-committee working party could, however, be set up to study from the standpoint of the criteria discussed in section III all those provisions currently in force which are in the nature of reservations, with a view to adopting a uniform position on this delicate matter.

7 April 1971

[62] *Article 5* of the Convention reads as follows:

"The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization."

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

International Court of Justice

LEGAL CONSEQUENCES FOR STATES OF THE CONTINUED PRESENCE OF SOUTH AFRICA IN NAMIBIA (SOUTH WEST AFRICA) NOTWITHSTANDING SECURITY COUNCIL RESOLUTION 276 (1970): ADVISORY OPINION DELIVERED ON 21 JUNE 1971

On 29 July 1970, the Security Council of the United Nations decided, by resolution 284 (1970), to request an advisory opinion of the Court on the following question:

"What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

In accordance with Article 66, paragraph 2, of the Statute of the Court, the States entitled to appear before the Court were notified that the Court was prepared to receive from them written or oral statements furnishing information on the question.

By Orders made on 5 and 28 August 1970, the President fixed 23 September 1970 as the time-limit for the submission of such statements and then extended it to 19 November 1970. Written statements were received from the Governments of the following States: Czechoslovakia, Finland, France, Hungary, India, Netherlands, Nigeria, Pakistan, Poland, South Africa, United States of America and Yugoslavia. In addition, the Secretary-General of the United Nations transmitted to the Court documents likely to throw light on the question (Statute, Article 65, paragraph 2) and a written statement.

On 26 January 1971, the Court made Orders whereby it decided not to accede to the objections raised by the Government of South Africa in its written statement against the participation of three Members of the Court in the proceedings. At a closed meeting held on Wednesday, 27 January 1971, the Court heard a representative of South Africa on the question of an application by that Government for leave, under Article 31, paragraph 2, of the Statute of the Court, to choose a judge *ad hoc* to sit in the proceedings. By an Order made on 29 January 1971, the Court decided to reject that application.

From 8 February to 17 March 1971, the Court heard oral statements in twenty-three public sittings. At the beginning of the first of these sittings, the President stated that the Court had examined the observations which the Government of South Africa had made concerning the supposed disability of the Court to give the advisory opinion requested on account of political pressure to which the Court, according to that Government, had been or might be subjected. The President went on:

"After having deliberated upon the matter, the Court has unanimously decided that it was not proper for it to entertain these observations, bearing as they do on the very nature of the

Court as the principal judicial organ of the United Nations, an organ which, in that capacity, acts only on the basis of the law, independently of all outside influence or interventions whatsoever, in the exercise of the judicial function entrusted to it alone by the Charter and its Statute. A court functioning as a court of law can act in no other way."

Oral statements were then presented on behalf of the Secretary-General of the United Nations, the Organization of African Unity and the following States: Finland, India, Netherlands, Nigeria, Pakistan, Republic of Viet-Nam, South Africa and United States of America.

By a letter of 14 May 1971, the President informed representatives of the States and organizations which had taken part in the oral proceedings that the Court had decided to reject the two requests made by the Government of South Africa concerning the supply of further factual material and the possible holding of a plebiscite.

On 21 June 1971, the Court delivered its Advisory Opinion in the following terms:

"The Court is of opinion,

"in reply to the question:

"'What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?'

"by 13 votes to 2,

"(1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

"by 11 votes to 4,

"(2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration;

"(3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia."

In the statement of its reasons, the Court first refers to its decision not to accede to the objections raised by the Government of South Africa against the participation in the proceedings of three Members of the Court. These objections were based on statements which the Judges in question had made in a former capacity as representatives of their Governments in United Nations organs dealing with matters concerning Namibia, or on their participation in the same capacity in the work of those organs. The Court came to the conclusion that none of the three cases called for the application of Article 17, paragraph 2, of its Statute.

The Court next recalls that the Government of South Africa had contended that the Court was not competent to deliver the opinion, because Security Council resolution 284 (1970) was invalid for the following reasons: (*a*) two permanent members of the Council abstained during the voting (Charter, Article 27, paragraph 3); (*b*) as the question related to a dispute between South Africa and other Members of the United Nations, South Africa should have been invited to participate in the discussion (Charter, Article 32) and the proviso requiring members of the Security Council which are parties to a dispute to abstain from voting should have been observed (Charter, Article 27, paragraph 3). The Court points out that (*a*) for a long period the voluntary abstention of a permanent member has consistently been interpreted as not constituting a bar to the adoption of resolutions by the Security Council; (*b*) the question of Namibia was placed on the agenda of the Council as a "situation" and the South African Government failed to draw the Council's attention to the necessity in its eyes of treating it as a "dispute".

In the alternative the Government of South Africa maintained that even if the Court had competence it should nevertheless, as a matter of judicial propriety, refuse to give the opinion requested, on account of political pressure to which, it was contended, the Court had been or might be subjected. On 8 February 1971, at the opening of the public sittings, the President of the Court made the statement reproduced above. The Government of South Africa also advanced another reason for not giving the advisory opinion requested: that the question was in reality contentious, because it related to an existing dispute between South Africa and other States. The Court considers that it was asked to deal with a request put forward by a United Nations organ with a view to seeking legal advice on the consequences of its own decisions. The fact that, in order to give its answer, the Court might have to pronounce on legal questions upon which divergent views exist between South Africa and the United Nations did not convert the case into a dispute between States. (There was therefore no necessity to apply Article 83 of the Rules of Court, according to which, if an advisory opinion is requested upon a legal question "actually pending between two or more States", Article 31 of the Statute, dealing with judges *ad hoc*, is applicable; the Government of South Africa having requested leave to choose a judge *ad hoc*, the Court had heard its observations on that point but, in the light of the above considerations, had decided not to accede to that request.)

In sum, the Court saw no reason to decline to answer the request for an advisory opinion.

Refuting the contentions of the South African Government and citing its own pronouncements in previous proceedings concerning South West Africa (Advisory Opinions of 1950, 1955 and 1956; Judgment of 1962), the Court goes on to recapitulate the history of the Mandate.

The Mandates System established by Article 22 of the Covenant of the League of Nations was based upon two principles of paramount importance: the principle of non-annexation and the principle that the well-being and development of the peoples concerned formed a sacred trust of civilization. Taking the developments of the past half-century into account, there can be little doubt that the ultimate objective of the sacred trust was self-determination and independence. The Mandatory was to observe a number of obligations, and the Council of the League was to see that they were fulfilled. The rights of the Mandatory as such had their foundation in those obligations. When the League of Nations was dissolved, the raison d'être and original object of these obligations remained. Since their fulfilment did not depend on the existence of the League, they could not be brought to an end merely because the supervisory organ had ceased to exist. The Members of the League had not declared, or accepted even by implication, that the mandates would be cancelled or lapse with the dissolution of the League. The last resolution of the League Assembly and Article 80, paragraph 1, of the United Nations Charter maintained the obligations of mandatories. The International Court of Justice has consistently recognized that the Mandate survived the demise of the League, and South Africa also admitted as much for a number of years. Thus the supervisory element, which is an essential part of the Mandate, was bound to survive. The United Nations suggested a system of supervision which would not exceed that which applied under the Mandates System, but this proposal was rejected by South Africa.

Eventually, in 1966, the General Assembly adopted resolution 2145 (XXI), whereby it decided that the Mandate was terminated and that South Africa had no other right to administer the Territory. Subsequently the Security Council adopted various resolutions, including resolution 276 (1970) declaring the continued presence of South Africa in Namibia illegal. Objections challenging the validity of these resolutions having been raised, the Court points out that it does not possess powers of judicial review or appeal in relation to the

United Nations organs in question. Nor did the validity of their resolutions form the subject of the request for advisory opinion. The Court nevertheless, in the exercise of its judicial function, and since those objections had been advanced, considered them in the course of its reasoning before determining the legal consequences arising from those resolutions. It recalls, to begin with, that the entry into force of the United Nations Charter established a relationship between all Members of the United Nations on the one side, and each Mandatory Power on the other, and that one of the fundamental principles governing that relationship is that the party which disowns or does not fulfil its obligations cannot be recognized as retaining the rights which it claims to derive from the relationship. Resolution 2145 (XXI) determined that there had been a material breach of the Mandate, which South Africa had in fact disavowed.

It had been contended (*a*) that the Covenant of the League of Nations did not confer on the Council of the League power to terminate a mandate for misconduct of the Mandatory and that the United Nations could not derive from the League greater powers than the latter itself had; (*b*) that, even if the Council of the League had possessed the power of revocation of the Mandate, it could not have been exercised unilaterally but only in co-operation with the Mandatory; (*c*) that resolution 2145 (XXI) made pronouncements which the General Assembly, not being a judicial organ, was not competent to make; (*d*) that a detailed factual investigation was called for; (*e*) that one part of resolution 2145 (XXI) decided in effect a transfer of territory. The Court observes (*a*) that, according to a general principle of international law (incorporated in the Vienna Convention on the Law of Treaties), the right to terminate a treaty on account of breach must be presumed to exist in respect of all treaties, even if unexpressed; (*b*) that the consent of the wrongdoer to such a form of termination cannot be required; (*c*) that the United Nations, as a successor to the League, acting through its competent organs, must be seen above all as the supervisory institution competent to pronounce on the conduct of the Mandatory; (*d*) that the failure of South Africa to comply with the obligation to submit to supervision cannot be disputed; (*e*) that the General Assembly was not making a finding on facts, but formulating a legal situation; it would not be correct to assume that, because it is in principle vested with recommendatory powers, it is debarred from adopting, in special cases within the framework of its competence, resolutions which make determinations or have operative design.

The General Assembly, however, lacked the necessary powers to ensure the withdrawal of South Africa from the Territory and therefore, acting in accordance with Article 11, paragraph 2, of the Charter, enlisted the co-operation of the Security Council. The Council for its part, when it adopted the resolutions concerned, was acting in the exercise of what it deemed to be its primary responsibility for the maintenance of peace and security. Article 24 of the Charter vests in the Security Council the necessary authority. Its decisions were taken in conformity with the purposes and principles of the Charter, under Article 25 of which it is for Member States to comply with those decisions, even those members of the Security Council which voted against them and those Members of the United Nations which are not members of the Council. The Court stresses that a binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence.

South Africa, being responsible for having created and maintained that situation, has the obligation to put an end to it and withdraw its administration from the Territory. By occupying the Territory without title, South Africa incurs international responsibilities arising from a continuing violation of an international obligation. It also remains accountable for any violations of the rights of the people of Namibia, or of its obligations under international law towards other States in respect of the exercise of its powers in relation to the Territory.

The States Members of the United Nations are under obligation to recognize the illegality and invalidity of South Africa's continued presence in Namibia and to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia. The precise determination of the acts permitted—what measures should be selected, what scope they should be given and by whom they should be applied—is a matter which lies within the competence of the appropriate political organs of the United Nations acting within their authority under the Charter. Thus it is for the Security Council to determine any further measures consequent upon the decisions already taken by it. The Court in consequence confines itself to giving advice on those dealings with the Government of South Africa which, under the Charter of the United Nations and general international law, should be considered as inconsistent with resolution 276 (1970) because they might imply recognizing South Africa's presence in Namibia as legal:

(*a*) Member States are under obligation (subject to (*d*) below) to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, Member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation. With respect to multilateral treaties, the same rule cannot be applied to certain general conventions such as those with humanitarian character, the non-performance of which may adversely affect the people of Namibia: it will be for the competent international organs to take specific measures in this respect.

(*b*) Member States are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there; and to make it clear to South Africa that the maintenance of diplomatic or consular relations does not imply any recognition of its authority with regard to Namibia.

(*c*) Member States are under obligation to abstain from entering into economic and other forms of relations with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory.

(*d*) However, non-recognition should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, the illegality or invalidity of acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate cannot be extended to such acts as the registration of births, deaths and marriages.

As to States not members of the United Nations, although they are not bound by Articles 24 and 25 of the Charter, they have been called upon by resolution 276 (1970) to give assistance in the action which has been taken by the United Nations with regard to Namibia. In the view of the Court, the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* to legality of the situation which is maintained in violation of international law. In particular, no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of any such relationship. The Mandate having been terminated by a decision of the international organization in which the supervisory authority was vested, it is for non-member States to act accordingly. All States should bear in mind that the entity injured by the illegal presence of South Africa in Namibia is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted.

The Government of South Africa had expressed the desire to supply the Court with further factual information concerning the purposes and objectives of its policy of separate

development, contending that to establish a breach of its substantive international obligations under the Mandate it would be necessary to prove that South Africa had failed to exercise its powers with a view to promoting the well-being and progress of the inhabitants. The Court found that no factual evidence was needed for the purpose of determining whether the policy of *apartheid* in Namibia was in conformity with the international obligations assumed by South Africa. It is undisputed that the official governmental policy pursued by South Africa in Namibia is to achieve a complete physical separation of races and ethnic groups. This means the enforcement of distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights. This the Court views as a flagrant violation of the purposes and principles of the Charter of the United Nations.

The Government of South Africa had also submitted a request that a plebiscite should be held in the Territory of Namibia under the joint supervision of the Court and the Government of South Africa. The Court having concluded that no further evidence was required, that the Mandate had been validly terminated and that in consequence South Africa's presence in Namibia was illegal and its acts on behalf of or concerning Namibia illegal and invalid, it was not able to entertain this proposal.

Accordingly, and for all those reasons, the Court gave the Advisory Opinion whose operative clause is reproduced above.

The President of the Court, Sir Muhammad Zafrulla Khan, appended a declaration to the Advisory Opinion. Vice-President Ammoun and Judges Padilla Nervo, Petrén, Onyeama, Dillard and de Castro appended separate opinions. Judge Sir Gerald Fitzmaurice and Judge Gros appended dissenting opinions.

Judge Sir Gerald Fitzmaurice considered that the Mandate was not validly revoked, that the Mandatory was still subject to the obligations of the Mandate whatever those might be, and that States Members of the United Nations were bound to respect the position unless and until it was changed by lawful means. Judge Gros disagreed with the Court's conclusions as to the legal validity and effects of General Assembly resolution 2145 (XXI), but considered that South Africa ought to agree to negotiate on the conversion of the Mandate into a United Nations trusteeship. Judges Petrén and Onyeama voted for subparagraph (1) of the operative clause but against subparagraphs (2) and (3), which in their view ascribed too broad a scope to the effects of non-recognition. Judge Dillard, concurring in the operative clause, added certain mainly cautionary comments on subparagraph (2). Judges Sir Gerald Fitzmaurice, Gros, Petrén, Onyeama and Dillard also criticized certain decisions taken by the Court with reference to its composition. The President and Judges Padilla Nervo and de Castro accepted the operative clause in full. The Vice-President, while sharing the views expressed in the Advisory Opinion, considered that the operative clause was not sufficiently explicit or decisive.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Italy

SUPREME COURT (SECOND PENAL SECTION)

ITALIAN REPUBLIC v. A. AND ANOTHER:
DECISION OF 21 MAY 1969 [1]

Immunity from criminal jurisdiction of a member of the family of a permanent representative to FAO—Interpretation of article XI, section 24 of the Headquarters Agreement between Italy and FAO in conjunction with the Vienna Convention on Diplomatic Relations

A, the son of the permanent representative to FAO of a Member Nation and another defendant were arrested in 1968 on a charge of larceny with aggravating circumstances.

A entered a plea of diplomatic immunity and requested his release from detention by virtue of article XI, section 24 of the Headquarters Agreement concluded between FAO and Italy on 31 October 1950,[2] which provides that permanent representatives and the members of their mission shall be entitled to the same privileges and immunities, subject to corresponding conditions and obligations, as the Government accords to diplomatic envoys and members of their missions of comparable rank accredited to the Government.

The court of First Instance (Tribunale di Roma) [3] recognized that the privileges and immunities of diplomatic envoys included, both under customary international law and under the Vienna Convention on Diplomatic Relations, [4] immunity from arrest and exemption from criminal jurisdiction and extended also to members of the family forming part of the household of the diplomatic envoy. Nevertheless, the Court dismissed the plea of immunity affirming, *inter alia*, that the immunities under the FAO Headquarters Agreement were more limited than those of diplomatic envoys since, as it appeared from various provisions of the Agreement, these immunities were based on, and operative solely with regard to the activities of the permanent representative relating to FAO; they were granted so as to protect the independent exercise of his functions and not for the personal benefit of the individual concerned.

The Court further held that in the case of A, diplomatic immunity was also excluded by the express provisions of Article 38, paragraph 1 of the Vienna Convention under which

[1] No. 176, published in *Jus gentium*, Rome, Vol. VIII, p. 334.

[2] United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (United Nations publication, Sales No. 61.V.3), p. 187.

[3] Judgement of 25 January 1969 published in *Rivista di Diritto Internazionale* 53: 571-584, with comment by M. Politi, *ibid.*, pp. 526-550.

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

citizens of the receiving State and persons having their permanent residence in its territory enjoy immunity only in respect of official acts. The Court pointed out that A and his father were Italian citizens by birth and had been resident in Italy before taking up residence in the sending State where they were naturalized. The Court considered that in view of the existence of ancestral landed interests and of the brevity of the residence abroad, both A and his father must be considered as having their permanent residence in Italy. Furthermore, having been naturalized in the sending State while still being a minor, A had not thereby lost his Italian nationality as he had acquired the foreign nationality "independently of his own will" within the meaning of article 8 of the Italian Nationality Law. [5]

A contested before the Supreme Court the decision dismissing his plea of immunity and requested the suspension of his case, but the Court of First Instance proceeded to the trial and on 22 February 1969 both A and the other defendant were found guilty and sentenced to imprisonment and the payment of fines. [6] The defendants appealed against this judgement to the Court of Appeal. [7]

Reviewing the judgement of 25 January 1969 in which the Court of First Instance rejected A's plea of diplomatic immunity, the Supreme Court held that the privileges and immunities of permanent representatives to FAO were exclusively governed by the Headquarters Agreement, which provided for limitations only in the case of persons who were Italian citizens or were engaged in any trade or industry in Italy. [8] The principle that privileges and immunities are conferred not for the personal benefit of the individuals themselves but in the interests of FAO—referred to in provisions of the Headquarters Agreement applicable to different categories of persons [9]—did not limit the scope of the immunities. Rather it constituted an affirmation of the purpose for which these immunities were granted, and is an application to a specific situation of the principle *ne impediatur legatio*.

On the question of citizenship, the Supreme Court held that article 8 of the Nationality Law did not relate to the naturalization of a minor, such cases being governed by Article 12, paragraph 2 from which provision it followed that A lost his Italian citizenship when he was naturalized in the sending State. Consequently the limitation of immunities under section 24, paragraph (*c*) of the Headquarters Agreement was not applicable in his case.

The Supreme Court accordingly quashed the judgement of the Court of First Instance of 25 January 1969 on the ground that the Italian Courts lacked jurisdiction.

The Court of Appeal, [10] seized with the appeal lodged by the defendants against the judgement of 22 February 1969 rendered by the Court of First Instance, found that A should not have been tried until the Supreme Court had pronounced itself on the preliminary question of his immunity from criminal jurisdiction. In the light of the judgement of the Supreme Court, the Court of Appeal held that A enjoyed immunity from jurisdiction and—on considerations not relevant to this summary—acquitted the other defendant on the grounds of insufficient evidence.

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[5] Law of 13 June 1912, reproduced in United Nations Legislative Series, *Laws Concerning Nationality* (United Nations publication, Sales No. 1954.V.1), p. 267.

[6] Judgement of the Tribunale di Roma of 22 February 1969.

[7] For the outcome of the proceedings before the Court of Appeal, see the last paragraph of this summary.

[8] Article XI, section 24, paragraph (*c*) of the Headquarters Agreement.

[9] See article XII, section 26, paragraph (*b*), article XIII, section 29, paragraph (*a*) and article XIV, section 31, paragraph (*b*).

[10] Judgement No. 3 of 13 January 1970 of the Third Section of the Rome Court of Appeal.

2. Switzerland

REPUBLIC AND CANTON OF GENEVA: COURT OF CIVIL JUSTICE

STAHEL v. BASTID:
DECISION DELIVERED BY THE FIRST CHAMBER ON 14 MAY 1971

Appeal against a decision by which the Court of First Instance had declared itself incompetent to hear an action brought against an employer's deputy member of the ILO Governing Body—The immunities from jurisdiction enjoyed by the members of the Governing Body can be claimed only during the meetings in which they have to take part

The Court heard an appeal against a decision in which the Court of the First Instance had declared that it was not competent to hear an action brought against an employers' deputy member of the Governing Body of the International Labour Organisation, on the grounds that, under article 15 of the Headquarters Agreement of 11 March 1946 between the ILO and Switzerland, [11] the defendant enjoyed immunity from legal process, the judge being obliged automatically to declare an exception for reasons of public order.

The Court pointed out that, under article 3 of the Headquarters Agreement, the ILO enjoyed the immunities known in international law as diplomatic immunities. Under the provisions of the Vienna Convention on Diplomatic Relations, [12] immunity from civil jurisdiction did not apply in the case of "a real action relating to private immovable property situated in the territory of the receiving State" (article 31, paragraph 1 (*a*)). The Court observed that those conditions had not been fulfilled and that the case in litigation clearly was a personal claim.

The Court also pointed out that article 21 of the Headquarters Agreement stipulated that the immunities provided for therein were "designed solely to ensure the free functioning of the International Labour Organisation and the complete independence of its agents". It added that the signatories to the Vienna Convention had also acknowledged the same principle in "realizing that the purpose of privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions".

The Court further asserted, in accordance with the opinion expressed by the Permanent Mission of Switzerland to international organizations after the appellant had brought the matter before the Geneva Justice and Police Department, that the immunities from jurisdiction enjoyed by the members of the ILO Governing Body—who were not officials and were not under the authority of the Director of the International Labour Office within the meaning of article 21 of the Headquarters Agreement—were not enjoyed on a continuous basis, but rather, intermittently; the person concerned therefore could claim such immunity only during the conferences in which he had to take part and during the meetings of the International Labour Conference. Although judicial precedent indicated that the case was one in which the judge was obliged automatically to declare an exception for reasons of public order, it was obvious that, in the case of privileges valid only intermittently, the person wishing to take advantage of them during judicial proceedings must demonstrate the *de facto* circumstances (conferences, meetings of international bodies in which he took part) which entitled him to immunity on a particular date. It was the duty of the person concerned to specify the exact dates of the meetings which he had attended or would be required to attend in his capacity as a deputy member of the Governing Body. During those periods, he was not bound by the proceedings required for the preliminary investigation, which should

[11] United Nations, *Treaty Series*, vol. 15, p. 379.

[12] *Ibid.*, vol. 500, p. 95.

therefore be suspended. On the other hand, the Court asserted, there had been no grounds for declaring the unconditional incompetence of the Geneva courts which, except during the aforementioned periods, remained competent to hear the case. Nor was it a question, in the absence of any conclusive proof regarding the facts which would have established temporary immunity from legal process during the preparation of the proceedings relating to the preliminary investigation, of retroactively nullifying any of those proceedings. During subsequent phases of the preliminary investigation, the defendant, by virtue of the privileges he enjoyed intermittently, naturally retained the right to have the investigation suspended during his periods of immunity.

In the light of the foregoing, the Court rescinded the judgement delivered by the Court of the First Instance; it declared the Geneva courts competent, within the limits described above, to hear the case and referred it back to the court for further action and a new judgement.

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3. United States of America

(*a*) UNITED STATES COURT OF CLAIMS

FRANK S. SCOTT JR. v. THE UNITED STATES; ALVIN C. WARNICK AND BARBARA W. WARNICK v. THE UNITED STATES: JUDGEMENT OF 16 OCTOBER 1970 [13]

American citizen living in a foreign country and exempted therein from income tax under an agreement between that country and an international organization—Such tax exemption does not by itself preclude a finding of "bona fide *residency" in a foreign country within the meaning of section 911* (a) (*1*) *of the United States Internal Revenue Code*

The case concerned two United States citizens, employed as university professors, who had accepted temporary positions with the Food and Agriculture Organization of the United Nations to render services in Argentina pursuant to an agreement between FAO and Argentina. The agreement made applicable to the plaintiffs the Convention on the Privileges and Immunities of the Specialized Agencies which provides in section 19 that "Officials of the specialized agencies shall

"...

"(*b*) enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations". [14]

Under the FAO-Argentina agreement therefore, Argentina did not impose its income tax on the plaintiffs.

On their federal tax returns, the plantiffs excluded the amounts paid by FAO, as income received from foreign services "while a *bona fide* resident of a foreign country ... for an uninterrupted period which includes an entire taxable year" (section 911 (*a*) (1) of the Internal Revenue Code). The exclusions having been disallowed in full, the plantiffs paid the amount allegedly owing and filed a refund claim with the District Director. Upon denial of the claim,

[13] 432 F. 2d 1388 (Ct. Cl. 1970).

[14] With respect to officials of the United Nations, the Convention on the Privileges and Immunities of the United Nations provides in Section 18 (*b*) that they shall be "exempt from taxation on the salaries and emoluments paid to them by the United Nations".

they began suit in court. The Government argued as its principal point that the privileges and immunities accorded the plantiffs by the agreement between Argentina and FAO precluded, as a matter of law, a finding of *bona fide* residency.

The Court concluded that both plaintiffs were entitled to refunds. It held *inter alia*

(1) that payment of foreign income tax was not a condition precedent to qualification under the statute relieving certain Americans residing abroad of federal income tax on earnings abroad;

(2) that the fact that an American taxpayer is exempt from foreign income tax under an agreement made by a foreign sovereign with the United States or another country or an international organization would not by itself preclude him from becoming a "resident" of a foreign country within the meaning of the statute referred to above;

(3) that where the plaintiffs each spent a period including one full taxable year in Argentina for professional reasons, and had intent to remain abroad to accomplish their purposes, and became well-integrated in their local milieu, they were both " *bona fide* residents" of Argentina so as to qualify under the statute referred to above even though the Argentina-FAO agreement granted them immunity from Argentina income tax and afforded them some minor privileges under local law.

(*b*) CIVIL COURT OF THE CITY OF NEW YORK, NEW YORK COUNTY, PART XXII, SMALL CLAIMS COURT

ESTERYA MENON v. ALICE E. WEIL ET AL.: JUDGEMENT OF 26 MARCH 1971 [15]

Actions instituted against United Nations officials—Suggestion of immunity presented by the Department of State—Court cannot enquire into propriety of the suggestion—Actions dismissed

Mrs. Esterya Menon, the estranged wife of a United Nations field worker of Indian nationality now stationed in South Korea, had instituted actions for support and maintenance against officials of the United Nations Headquarters staff, whom she was suing as "agents" of the absent Mr. Menon, apparently on the ground that in some previous official correspondence with her, they had questioned her status as Menon's wife by reason of certain controversial Turkish divorce proceedings or had otherwise failed to give her satisfaction. The United States Attorney made a suggestion of immunity and moved to dismiss.

The Small Claims Court held that a suggestion of sovereign immunity presented to court by the Department of State through the Attorney General or his local representative should be accepted by the court without further inquiry—even against a claim of prior waiver, or a claim that the assertion of immunity violated an adversary's constitutional rights—and that all further judicial intervention must cease.

The Court observed that where an immunity claim was asserted not by the Department of State but by the alleged sovereign entity itself, the court could enquire whether the activity was governmental or commercial and proceed on the merits in the latter case.

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[15] 66 Misc. 2d 114, 320 N.Y. S.2d 405 (N.Y.C. Civ. Ct. 1971).

However, in the present case where the Attorney General invoked on behalf of the State Department the applicable immunity provisions of the Convention on the Privileges and Immunities of the United Nations, the court could not enquire into propriety of the suggestion.

The Court therefore dismissed the actions and ordered that any further suit tendered by plaintiff or any agent or assignee against any United Nations personnel be dismissed.

Part Four

LEGAL DOCUMENTS INDEX AND BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter IX

LEGAL DOCUMENTS INDEX OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal Documents Index of the United Nations [1, 2]

MAIN HEADINGS

I. GENERAL ASSEMBLY AND SUBSIDIARY ORGANS

1. Plenary General Assembly and Main Committees
2. Committee on Applications for Review of Administrative Tribunal Judgements
3. Committee on the Peaceful Uses of Outer Space
4. United Nations Council for Namibia
5. Special Committee on the Question of Defining Aggression
6. Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction
7. International Law Commission
8. United Nations Commission on International Trade Law
9. United Nations Conference on the Law of Treaties (Vienna, 1968-1969)
10. Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

II. SECURITY COUNCIL AND SUBSIDIARY ORGANS

Security Council

III. ECONOMIC AND SOCIAL COUNCIL AND SUBSIDIARY ORGANS

1. Economic and Social Council and Sessional Committees
2. Commission on Human Rights
3. Commission on the Status of Women
4. Commission on Narcotic Drugs

[1] The documentary material relating to each United Nations organ is divided, where appropriate, into two sections: "[(A)] Documents relating to agenda items of legal interest" and "[(B) Other] documents of legal interest". Section (A) contains references to the summary and verbatim records of the meetings where the item was discussed, as well as to all the documents related to the agenda item. Section (B) lists the remaining documents of legal interest. A document relating to a given United Nations organ is not listed in the section (B) relating to that organ if it already appears in section (A) of any other organ.

[2] The following abbreviations have been used in the document references: a.i. = agenda item; E.S.C. = Economic and Social Council; G.A. = General Assembly; mtg. = meeting; Plen. = Plenary meeting.

5. Economic Commission for Asia and the Far East
6. Economic Commission for Africa
7. United Nations Conference for the Adoption of Protocol on Psychotropic Substances
8. UN/IMCO Conference on International Container Traffic

IV. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

V. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

VI. UNITED NATIONS SOCIAL DEVELOPMENT RESEARCH INSTITUTE

VII. SECRETARIAT

VIII. INTERNATIONAL COURT OF JUSTICE

I. GENERAL ASSEMBLY AND SUBSIDIARY ORGANS

1. PLENARY GENERAL ASSEMBLY AND MAIN COMMITTEES

(A) *Documents relating to agenda items of legal interest* (twenty-sixth session)

(1) *Report of the Economic and Social Council* (agenda item 12) [3]

(*a*) Report of the Economic and Social Council [Chapter XV, section E]: G.A. (XXVI), Supp. No. 3 (A/8403).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolution* (A/C.3/L.1380) and *report* of the Third Committee (A/8588): see G.A. (XXVI), Annexes, a.i. 12.

(*ii*) *debate:* G.A. (XXVI), 3rd Committee, 1905th mtg.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen. 2027th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2856 (XXVI) [4] of 20 December 1971.

(2) *Rationalization of the procedures and organization of the General Assembly: report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly* (agenda item 26)

(*a*) Basic document: Report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly: G.A. (XXVI), Supp. No. 26 (A/8426).

(*b*) Consideration by the Sixth Committee:

(*i*) *report* of the Sixth Committee (A/8752): see G.A. (XXVI), Annexes, a.i. 26.

(*ii*) *debate:* G.A. (XXVI), 6th Committee, 1299th mtg.

(*c*) Consideration in plenary:

(*i*) *draft resolution* (A/L.660): see G.A. (XXVI), Annexes, a.i. 26.

(*ii*) *debate:* G.A. (XXVI), Plen., 2024th mtg.

(*iii*) *resolution adopted:* General Assembly resolution 2837 (XXVI) of 17 December 1971.

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[3] See also section III 1 (i) (1) below.

[4] Reproduced in this *Yearbook* p. 41.

(3) *General and complete disarmament: report of the Conference of the Committee on Disarmament* (agenda item 27)

(*a*) Basic document: Report of the Conference of the Committee on Disarmament: see *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234.

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.588, L.589 and Corr.1, L.591 and Corr.1) and *report* of the First Committee (A/8573): see G.A. (XXVI), Annexes, a.i. 27, 28, 29, 30, 31, 32 and 98.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1827th to 1842nd and 1846th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2022nd mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2825 (XXVI) of 16 December 1971.

(4) *Question of chemical and bacteriological (biological) weapons: report of the Conference of the Committee on Disarmament* (agenda item 28)

(*a*) Basic document: Report of the Conference of the Committee on Disarmament: see *Official Records of the Disarmament Commission*, Supplement for 1971, document DC/234.

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.578 and Corr.1, L.579 and Rev.1, L.580 to L.582, L.592 and Rev.1, L.596) and *report* of the First Committee (A/8574): see G.A. (XXVI), Annexes, a.i. 27, 28, 29, 30, 31, 32 and 98.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1827th to 1842nd, 1846th and 1847th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2022nd mtg.

(*ii*) *resolution adopted:* General Assembly resolutions 2826 (XXVI) and 2827 (XXVI),[5] of 16 December 1971.

(5) *Urgent need for suspension of nuclear and thermonuclear tests: report of the Conference of the Committee on Disarmament* (agenda item 29)

(*a*) Basic document: Report of the Conference of the Committee on Disarmament: see *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234.

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.583 and Rev.1, L.584, L.585, L.595) and *report* of the Sixth Committee (A/8575): see G.A. (XXVI), Annexes, a.i. 27, 28, 29, 30, 31, 32 and 98.

(*ii*) *debate:* G.A. (XXVI), First Committee, 1827th to 1842nd, 1846th and 1847th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2022nd mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2828 A,[6] B and C[7] (XXVI) of 16 December 1971.

(6) *Status of the implementation of General Assembly resolution 2666 (XXV) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of*

[5] Reproduced in this *Yearbook*, p. 42.

[6] *Ibid.*, p. 45.

[7] *Ibid.*, p. 45.

Nuclear Weapons in Latin America (Treaty of Tlatelolco) : report of the Secretary-General (agenda item 31)

(*a*) Basic document: Note by the Secretary-General (A/8435 and Add.1).

(*b*) Consideration by the First Committee:

(*i*) *draft resolution* (A/C.1/L.587) and *report* of the First Committee (A/8582): see G.A. (XXVI), Annexes, a.i. 27, 28, 29, 30, 31, 32 and 98.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1827th to 1842nd and 1848th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2022nd mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2830 (XXVI) [8] of 16 December 1971.

(7) *International co-operation in the peaceful uses of outer space : report of the Committee on the Peaceful Uses of Outer Space* (agenda item 33) [9]

(*a*) Basic document: Report of the Committee on the Peaceful Uses of Outer Space: G.A. (XXVI), Suppl. No. 20 (A/8420).

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.569 and Corr.1, L.570 and Rev.1, L.571, L.572, L.574) and *report* of the First Committee (A/8528): see G.A. (XXVI), Annexes, a.i. 33 and 92.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1819th to 1826th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 1998th mtg.

(*ii*) *resolution adopted:* General Assembly resolutions 2776 (XXVI), [10] 2777 (XXVI) and 2778 (XXVI), of 29 November 1971.

(8) *Implementation of the Declaration on the Strengthening of International Security : report of the Secretary-General* (agenda item 34)

(*a*) Basic document: Implementation of the Declaration on the Strengthening of International Security: report of the Secretary-General (A/8431 and Add.1-5).

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.566, L.567, L.573 and Rev.2, L.577, L.604 and Corr.1) and *report* of the First Committee (A/8626): see G.A. (XXVI), Annexes, a.i. 34.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1804th to 1818th, 1827th to 1829th, 1835th, 1856th and 1857th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2029th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2880 (XXVI) of 21 December 1971.

(9) *Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea : report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction* (agenda item 35) [11]

(*a*) Basic document: Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction: G.A. (XXVI), Supp. No. 21 (A/8421).

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[8] *Ibid.*, p. 47.

[9] See also section 3 below.

[10] Reproduced in this *Yearbook*, p. 48.

[11] See also section 6 below.

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.586 and Rev.1, L.599 and Rev.1, L.600, L.601, L.602 and Rev.1, L.603) and *report* of the First Committee (A/8623): see G.A., Annexes, a.i. 35.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1843rd, 1844th and 1849th to 1855th mtg.

(*c*) Consideration in plenary:

(*i*) *draft resolution* ((A/L.670): see G.A. (XXVI), Annexes, a.i. 35.

(*ii*) *debate:* G.A. (XXVI), Plen., 2029th and 2031st mtgs.

(*iii*) *resolution adopted:* General Assembly resolution 2881 (XXVI)[12] of 21 December 1971.

(10) *The policies of* apartheid *of the Government of South Africa*

(a) *Report of the Special Committee on* Apartheid (b) *Reports of the Secretary-General* (agenda item 37)

Report of the Economic and Social Council [chapter XVII (section C)] (agenda item 12)

(*a*) Basic documents: Reports of the Special Committee on *Apartheid:* G.A. (XXVI), Supp. No. 22 (A/8422/Rev.1); Report of the Economic and Social Council; G.A. (XXVI), Supp. No. 3 (A/8403).

(*b*) Consideration by the Special Political Committee:

(*i*) *draft resolutions* (A/SPC/L.205 and Rev.1, L.206 and Rev.1, L.208, L.209 and Rev.1 and 2, L.210, L.211, L.212 and Rev.1, L.213, L.214 and Rev.1, L.215, L.217 to L.222) and *report* of the Special Political Committee (A/8504 and Add.1): see G.A. (XXVI), Annexes, a.i. 37 and 12.

(*ii*) *debate:* G.A. (XXVI), Special Political Committee, 757th to 780th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 1981st and 1997th mtgs.

(*ii*) *resolutions adopted:* General Assembly resolutions 2764 (XXVI) of 9 November 1971 and 2775 A to H (XXVI) of 29 November 1971.

(11) *United Nations Conference on the Human Environment: report of the Secretary-General* (agenda item 47)

(*a*) Basic document: Note by the Secretary-General (A/8509 and Add.1).

(*b*) Consideration by the Second Committee:

(*i*) *draft resolutions* (A/C.2/L.1185 and Rev.1 and 2, L.1195, L.1202, L.1212 to L.1215) and *report* of the Second Committee (A/8577): see G.A. (XXVI), Annexes, a.i. 47.

(*ii*) *debate:* G.A. (XXVI), 2nd Committee, 1422nd to 1428th, 1435th, 1436th, 1438th and 1439th mtgs.

(*c*) Consideration in plenary:

(*i*) *draft resolutions* (A/L.661 and L.665): see G.A. (XXVI), Annexes, a.i. 47.

(*ii*) *debate:* G.A. (XXVI), Plen., 2026th mtg.

(*iii*) *resolutions:* General Assembly resolutions 2849 (XXVI) and 2850 (XXVI), of 20 December 1971.

(12) *Respect for human rights in armed conflicts* (a) *Report of the Secretary-General* (b) *Protection of journalists engaged in dangerous missions in areas of armed conflict: report of the Secretary-General* (agenda item 49)

(*a*) Basic document: Report of the Secretary-General (sub-item (*a*) (A/8371 and Add.1-3); Report of the Secretary-General on sub-item (*b*) (A/8370 and Add.1); Note by the

[12] Reproduced in this *Yearbook*, p. 50.

Secretary-General transmitting the report of the Working Group established under resolution 15 (XXVII) of the Commission on Human Rights (A/8438).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1895 and Rev.1, L.1896 and Rev.1 and 2, L.1902, L.1903, L.1904 and Rev.1 and 2, L.1905, L.1910 to L.1914 and Rev.1, L.1915, L.1919 and Rev.1) and *report* of the Third Committee (A/8589): see G.A. (XXVI), Annexes, a.i. 49.

(*ii*) *debate:* G.A. (XXVI), 3rd Committee, 1885th to 1887th and 1889th to 1898th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2027th mtg.

(*ii*) *resolutions adopted:* General Assembly resolutions 2852 (XXVI) [13] 2853 (XXVI) [14] and 2854 (XXVI), [15] of 20 December 1971.

(13) *Elimination of all forms of racial discrimination* (a) *International Year for Action to Combat Rascism and Racial Discrimination: report of the Secretary-General* (b) *Report of the Committee on the Elimination of Racial Discrimination* (c) *Status of the International Convention on the Elimination of All Forms of Racial Discrimination: report of the Secretary-General* (agenda item 54)

(*a*) Basic documents: Reports of the Secretary-General (A/8367 and Corr.1 and 2 and Add.1 and 2 and A/8439); Report of the Committee on the Elimination of Racial Discrimination: G.A. (XXVI), Supp. No. 18 (A/8418).

(b) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1872 and Rev.1 and 2, L.1873 and Rev.1, L.1874 and Rev.1, L.1875 and L.1876) and *report* of the Third Committee (A/8542): see G.A. (XXVI), Annexes, a.i. 54.

(*ii*) *debate:* G.A. (XXVI), 3rd Committee, 1844th to 1868th and 1871st mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2001st mtg.

(*ii*) *resolutions adopted:* General Assembly resolutions 2783 (XXVI), [16] 2784 (XXVI), 2785 (XXVI) and 2786 (XXVI), of 6 December 1971.

(14) *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights* (agenda item 55)

(*a*) Basic document: Note by the Secretary-General (A/8331).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1877 and Rev.1, L.1878 to L.1881 and Rev.1, L.1882, L.1886 and Rev.1, L.1888, L.1889 and L.1893) and *report* of the Third Committee, (A/8543): see G.A. (XXVI), Annexes, a.i. 55.

(*ii*) *debate:* G.A. (XXVI), 3rd Committee, 1868th to 1873rd and 1880th to 1884th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2001st mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2787 (XXVI) of 6 December 1971.

(15) *Question of the punishment of was criminals and of persons who have committed crimes against humanity: report of the Secretary-General* (agenda item 56) [17]

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[13] Reproduced in this *Yearbook*, p. 51.

[14] *Ibid.*, p. 54.

[15] *Ibid.*, p. 55.

[16] *Ibid.*, p. 57.

[17] See also section III 2 (A) (5) below.

(*a*) Basic document: Report of the Secretary-General (A/8345).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolution* (A/C.3/L.1918) and *report* of the Third Committee (A/8592): see G.A. (XXVI), Annexes, a.i. 56.

(*ii*) *debate:* G.A. (XXVI), 3rd Committee, 1902nd mtg.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2025th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2840 (XXVI) of 18 December 1971.

(16) *Measures to be taken against nazism and other totalitarian ideologies and practices based on incitement to hatred and racial in tolerance* (agenda item 57) [18]

(*a*) Basic document: Note by the Secretary-General (A/8332).

(*b*) Consideration by the Third Committee:

(*i*) *report* of the Third Committee (A/8593): see G.A. (XXVI), Annexes, a.i. 57.

(*ii*) *debate:* G.A., (XXVI), 3rd Committee, 1902nd mtg.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2025th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2839 (XXVI) [19] of 18 December 1971.

(17) *Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civic and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights: report of the Secretary-General* (agenda item 63)

(*a*) Basic document: Report of the Secretary-General (A/8390).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1894 and L.1898) and *report* of the Third Committee (A/8546): see G.A. (XXVI), Annexes, a.i. 63.

(*ii*) *debate:* G.A. (XXVI), 3rd Committee, 1869th, 1884th and 1885th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2001st mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2788 (XXVI) [20] of 6 December 1971.

(18) *Question of Namibia* (a) *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (b) *Report of the United Nations Council for Namibia* (c) *United Nations Fund for Namibia: report of the Secretary-General* (d) *Appointment of the United Nations Commissioner for Namibia* (agenda item 66) [21]

(*a*) Basic documents: Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: G.A. (XXVI), Supp. No. 23, chapter VII (A/8423/Add.3); Report of the United Nations Council for Namibia: G.A. (XXVI), Supp. No. 24 (A/8424); Reports by the Secretary-General (A/8473 and A/8388).

(*b*) Consideration by the Fourth Committee:

(*i*) *draft resolutions* (A/C.4/L.994 and L.997) and *report* of the Fourth Committee (A/8618): see G.A. (XXVI), Annexes, a.i. 66.

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[18] See also section III 2 (4) below.

[19] Reproduced in this *Yearbook*, p. 58.

[20] *Ibid.*, p. 61.

[21] See also section 4 below.

(*ii*) *debate:* G.A. (XXVI), 4th Committee, 1921st to 1926th, 1928th to 1936th, 1938th to 1947th, 1949th, 1950th, 1952nd, 1954th, 1960th and 1965th to 1969th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2028th, 2030th and 2031st mtgs.

(*ii*) *resolutions adopted:* General Assembly resolutions 2781 (XXVI) [22] and 2782 (XXVI), of 20 December 1971.

See also the decision taken by the Assembly at its 2031st meeting, on 22 December 1971.

(19) *Security of missions accredited to the United Nations and safety of their personnel* (agenda item 99)

Status of the work of the Informal Joint Committee on Host Country Relations: report of the Secretary-General (agenda item 86)

(*a*) Basic documents: Request for the inclusion of an additional item in the agenda of the twenty-sixth session (A/8493): see G.A. (XXVI), Annexes, a.i. 99 and 86; Status of the work of the Informal Joint Committee on Host Country Relations: report of the Secretary-General (A/8474).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.832, L.832/Rev.1 and Corr.1, L.832/Rev.2, L.835, L.838, L.839, L.840 and Rev.1, L.841, L.842) and *report* of the Sixth Committee (A/8585): see G.A., Annexes, a.i. 99 and 86.

(*ii*) *debates:* G.A. (XXVI), 6th Committee, 1285th to 1292nd, 1296th to 1298th, 1302nd and 1303rd mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2019th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2819 (XXVI) [23] of 15 December 1971.

(20) *Report of the United Nations Commission on International Trade Law on the work of its fourth session* (agenda item 87) [24]

(*a*) Basic document: Report of the United Nations Commission on International Trade Law on the work of its fourth session: G.A. (XXVI), Supp. No. 17 (A/8417).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolution* (A/C.6/L.823) and *report* of the Sixth Committee (A/8506): see G.A. (XXVI), Annexes, a.i. 87.

(*ii*) *dobate:* G.A. (XXVI), 6th Committee, 1247th to 1245th, 1266th and 1267th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 1986th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2766 (XXVI) [25] of 17 November 1971.

(21) *Report of the International Law Commission on the work of its twenty-third session* (agenda item 88) [26]

(*a*) Basic document: Report of the International Law Commission on the work of its twenty-third session: G.A. (XXVI), Supp. No. 10 (A/8410/Rev.1) (containing in an annex the observations of Member States, Switzerland, the specialized agencies and the IAEA on the draft articles on representation of States to international organizations).

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[22] Reproduced in this *Yearbook*, p. 62.

[23] *Ibid.*, p. 65.

[24] See also section 8 below.

[25] Reproduced in this *Yearbook*, p. 67.

[26] See also section 7 below.

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.825, L.826) and *report* of the Sixth Committee (A/8537):[27] see G.A. (XXVI), Annexes, a.i. 88.

(*ii*) *debate:* G.A. (XXVI), 6th Committee, 1255th to 1265th, 1279th and 1280th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 1999th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2780 (XXVI)[28] of 3 December 1971.

(22) *Report of the Special Committee on the Question of Defining Aggression* (agenda item 89)[29]

(*a*) Basic document: Report of the Special Committee on the Question of Defining Aggression: G.A. (XXVI), Supp. No. 19 (A/8419).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolution* (A/C.6/L.827) and *report* of the Sixth Committee (A/8525): see G.A. (XXVI), Annexes, a.i. 89.

(*ii*) *debate:* G.A. (XXVI), 6th Committee, 1268th to 1276th, 1281st and 1285th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 1999th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2781 (XXVI) of 3 December 1971.

(23) *Review of the role of the International Court of Justice* (agenda item 90)

(*a*) Basic document: Report of the Secretary-General (A/8382 and Add.1-4).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.829 to L.831, L.834, L. 836 and L.837) and *report* of the Sixth Committee (A/8568): see G.A. (XXVI), Annexes, a.i. 90.

(*ii*) *debate:* G.A. (XXVI), 6th Committee, 1277th to 1284th and 1293rd to 1296th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2019th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2818 (XXVI) of 15 December 1971.

(24) *United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General* (agenda item 91).

(*a*) Basic document: Report of the Secretary-General (A/8508 and Corr.1).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.843 and Rev.1, L.844, L.845, L.847, L.848) and *report* of the Sixth Committee (A/8570): see G.A. (XXVI), Annexes, a.i. 91.

(*ii*) *debate:* G.A. (XXVI), 6th Committee, 1300th, 1301st and 1304th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 2025th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2838 (XXVI) of 18 December 1971.

(25) *Preparation of an international treaty concerning the Moon* (agenda item 92)

(*a*) Basic document: Request for inclusion of an item in the provisional agenda of the twenty-sixth session (A/8391); Draft Treaty concerning the Moon (A/C.1/L.568): see G.A. (XXVI), Annexes, a.i. 92.

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[27] *Ibid.*, p. 68.

[28] *Ibid.*, p. 104.

[29] See also section 5 below.

(*b*) Consideration by the First Committee:

(*i*) *draft resolution* (A/C.1/L.572) and *report* of the First Committee (A/8529): see G.A. (XXVI), Annexes, a.i. 33 and 92.

(*ii*) *debate:* G.A. (XXVI), 1st Committee, 1819th to 1826th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXVI), Plen., 1998th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2779 (XXVI) of 29 November 1971.

(26) *World Disarmament Conference* (agenda item 97)

(*a*) Basic document: Request for the inclusion of an additional item in the agenda of the twenty-sixth session (A/8491): see G.A. (XXVI), Annexes, a.i. 97.

(*b*) Consideration in plenary:

(*i*) *draft resolutions* (A/L.631 and Add.1, L.659 and Add.1): see G.A. (XXVI), Annexes a.i. 97.

(*ii*) *debate:* G.A. (XXVI), Plen., 1978th, 1985th, 1987th, 1989th, 1990th, 1992nd, 1994th to 1996th and 2022nd mtgs.

(*iii*) *resolution adopted:* General Assembly resolution 2833 (XXVI) of 16 December 1971.

(B) *Other documents of legal interest*

International Court of Justice

Report of the Court: G.A. (XXVI). No. 5 (A/8405).

United Nations Relief and Works Agency for Palestine Refugees in the Near East

Report of the Commissioner-General: G.A. (XXVI), Supp. No. 13 (A/8413) (Chapter I, Section E: Legal matters).

United Nations High Commissioner for Refugees

Report of the High Commissioner: G.A. (XXVI), Supp. No. 12 (A/8412) (Chapter I: International protection) and 12A (A/8412/Add.1) (Chapter III: International protection).

Administrative Tribunal

Note by the Secretary General (A/INF/146) (transmits annual note by the Administrative Tribunal to the President of the General Assembly as to the functioning of the Tribunal).

Appointments to file vacancies in the membership of subsidiary bodies of the General Assembly, United Nations Administrative Tribunal. Note by the Secretary-General (A/8355 and Corr.1).

Report of the Fifth Committee (A/8465): see G.A. (XXVI), Annexes, a.i. 79.

See also General Assembly resolution 2761 (XXVI) of 8 November 1971.

2. Committee on Applications for Review of Administrative Tribunal Judgements

Documents of legal interest

Report of the Committee on its resumed eighth session (27 January-12 February 1971) (A/AC.86/(A/AC.86/12).

Report of the Committee on its ninth session (5 November 1971) (A/AC.86/13).

3. Committee on the Peaceful Uses of Outer Space [30]

(A) *Documents relating to an agenda item of legal interest* (fourteenth session)

Consideration of the report [s] of . . . (b) *The Legal Sub-Committee (A/AC.105/94)* (agenda item 3)

[30] See also section 1 (A) (7) above.

(*a*) Basic document: Report of the Legal Sub-Committee (contining the text of a draft Convention on International Liability for Damage Caused by Space Objects, adopted by the Legal Sub-Committee) (A/AC.1059/4).

(*b*) Consideration by the Committee:

(*i*) *report* of the Committee: G.A. (XXVI), Supp. No. 20 (A/8420).

(*ii*) *debate:* A/AC.105/PV. 98 to 103.

(B) *Other documents of legal interest*

Legal Sub-Committee

Summary records of the one-hundred and fifty-second to one-hundred and sixty-ninth meetings (A/AC.105/C.2/SR.152-169).

4. United Nations Council for Namibia [31]

Documents of legal interest

Question of travel documents

Report of the Secretary-General (A/AC.131/10/Add.5-8).

Letter dated 24 July 1970 from the Acting United Nations Commissioner for Namibia addressed to the Minister for Foreign Affairs of the Imperial Government of Ethiopia (A/AC.131/24).

5. Special Committee on the Question of Defining Aggression [32]

Documents relating to an agenda item of legal interest

Consideration of the question of defining aggression (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV) (agenda item 5)

(*a*) Basic document: Report of the Working Group established by the Special Committee in 1970 (A/AC.134/L.25/Rev.1).

(*b*) Consideration by the Special Committee:

(*i*) *draft proposals* (A/AC.134/L.31, L. 32), *draft resolution* (A/AC.134/L.34), *working paper* (A/AC.134/L.28), *reports* of the Working Group (A/AC.134/L.30 and Corr.1 and L.35) and *report* of the Committee: G.A. (XXVI), Supp. No. 19 (A/8419).

(*ii*) *debate:* A/AC.134/SR.79 to 91.

6. Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction[33]

Documents of legal interest

Analytical summary of proposals and suggestions embodied in the views expressed by delegations in the debates in the First Committee of the General Assembly at the twenty-fifth session and in the Sea-Bed Committee in March 1971. Working paper prepared by the Secretariat (A/AC.138/41).

Report of Sub-Committee I (A/AC.138/60 and Add.1).

Report of Sub-Committee II (A/AC.138/61).

Report of Sub-Committee III (A/AC.138/62).

Summary Records of the forty-fifth to sixtieth, sixty-first to sixty-seventh, and sixth-eighth to seventieth meetings of the Committee (A/AC.138/SR.45-60.138/SR.61-67 and A/AC.138/SR.68-70).

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[31] See also section 1 (A) (18) above.

[32] See also section 1 (A) (22) above.

[33] See also section 1 (A) (9) above.

7. International Law Commission [34]

(A) *Documents relating to agenda items of legal interest* (twenty-third session)

(1) *Relations between States and international organizations* (agenda item 1)

(*a*) Basic document: Sixth report on relations between States and international organizations by Mr. Abdullah El-Erian, Special Rapporteur (A/CN.4/241 and Add.1-6).

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: G.A. (XXVI), Supp. No. 10 (A/8410/Rev.1), Chapter II.

(*ii*) *debate:* International Law Commission, 1088th to 1110th, 1121st and 1122nd mtgs.

(2) *The question of treaties concluded between States and international organizations or between two or more international organizations* (agenda item 5)

(*a*) Basic document: Report of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/250): see G.A. (XXVI), Supp. No. 10 (A/8410/Rev.1).

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: G.A. (XXVI), Supp. No. 10 (A/8410/Rev.1), Chapter IV.

(*ii*) *debate:* International Law Commission, 1129th mtg.

(B) *Other documents of legal interest*

General

Yearbook of International Law Commission 1970, vol. I: Summary records of the twenty-second session (A/CN.4/SER.A/1970, Sales No. E.71.V.6) and vol. II: Documents of the twenty-second session including the report of the Commission to the General Assembly (A/CN.4/SER.A/1970/Add.1, Sales, No. E.71.V.7).

Succession of States in respect of treaties

Fourth report by Sir Humphrey Waldock, Special Rapporteur (A/CN.4/249).

Second and third studies prepared by the Secretariat in the series entitled "Succession of States in respect of bilateral treaties" (A/CN.4/243 and Add.1).

Succession of States in respect of matters other than treaties

Fourth report by Mr. Mohammed Bedjaoui, Special Rapporteur (A/CN.4/247 and Add.1) (subtitled "Draft articles with commentaries and observations on succession to public property").

State responsibility

Third report by Mr. Roberto Ago, Special Rapporteur (A/CN.4/246 and Add.1-3) (subtitled "The internationally wrongful act of the State, source of international responsibility").

Review of the Commission's long-term programme of work

Survey of International Law, prepared by the Secretariat (A/CN.4/245).

8. United Nations Commission on International Trade Law [35]

(A) *Documents relating to agenda items of legal interest* (fourth session)

(1) *International legislation on shipping* (agenda item 4)

(*a*) Basic documents: [UNCITRAL] Working Group on International Legislation on Shipping: report on the work of its second session (A/CN.9/55); Report of the UNCTAD Working Group on International Shipping Legislation on its second session (TD/B/C.4/86).

[34] See also section 1 (A) (21) above. For detailed information, see *Yearbook of the International Law Commission, 1971* (United Nations publication, Sales. Nos. E.72.V.5 and E.72.V.6).

[35] See also section 1 (A) (20) above.

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: G.A. (XXVI), Supp. No. 17 (A/8417), Chapter II.

(*ii*) *debate:* A/CN.9/SR. 65 to 68, 70, 73 and 77.

(2) *International payments* (a) *Negotiable instruments*; (b) *Bankers' commercial credits*; (c) Bank *guarantees*; (d) *Security interests in goods* (agenda item 5)

(*a*) Basic documents: Analysis of the replies received from Governments and banking and trade institutions to the questionnaire on negotiable instruments used for making international payments: report of the Secretary-General (A/CN.9/38/Add.1); Possible content of uniform rules applicable to a special negotiable instrument for optional use in international transactions: report of the Secretary-General (A/CN.9/48); Suggestions as to future work on negotiable instruments: report of the Secretary-General (A/CN.9/53).

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: G.A. (XXVI), Supp. No. 17 (A/8417), Chapter III.

(*ii*) *debate:* A/CN.9/SR.67, 69, 70 and 72.

(3) *International sale of goods* (a) *Uniform rules governing the international sale of goods*; (b) *General conditions of sale and standard contracts*; (c) *Time limits and limitations (prescriptions) in the field of the international sale of goods* (agenda item 6)

(*a*) Basic documents: Report of the Working Group on the International Sale of Goods (A/CN.9/52 and Corr.1); General conditions of sale and standard contracts: report of the Secretary-General (A/CN.9/54); Report of the Working Group on Time-limits and Limitations (Prescription) on its second session (A/CN.9/50 and Corr.1).

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: G.A. (XXVI), Supp. No. 17 (A/8417), Chapter IV.

(*ii*) *debate:* A/CN.9/SR.71 to 78 and 80 to 85.

(B) *Other documents of legal interest*

General

United Nations Commission on International Trade Law, Yearbook, vol. I, 1968-1970 (A/CN.9/SER.A/1970, Sales No. E.71.V.1).

Harmonization and unification of international trade law

Current activities of international organizations related to the harmonization and unification of international trade law: report of the Secretary-General (A/CN.9/59 and Corr.1).

Training and assistance in the field of international trade law

Report of the Secretary-General (A/CN.9/58 and Add.1).

9. United Nations Conference on the Law of Treaties (Vienna, 1968-1969)

Document of legal interest

Official Records: Documents of the Conference (First and second sessions) (A/CONF.39/11/Add.2, Sales No. E.70.V.5).

10. Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Document of legal interest

Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Report prepared by the Secretariat (A/CONF.43/5, Sales No. E.71.IV.8).

II. SECURITY COUNCIL AND SUBSIDIARY ORGANS

SECURITY COUNCIL

Document of legal interest

Review of multilateral treaties to which South Africa became a party, and which either by direct reference or on the basis of relevant provisions of international law might be considered to apply to Namibia. (S/10288.)

III. ECONOMIC AND SOCIAL COUNCIL AND SUBSIDIARY ORGANS

1. ECONOMIC AND SOCIAL COUNCIL AND SESSIONAL COMMITTEES

(*i*) *Documents relating to agenda items of legal interest* (fiftieth session)

(1) *Social development* (agenda item 2) [36]

(*a*) Basic document: Report of the Commission for Social Development on its twenty-second session: E.S.C. (L), Supp. No. 3 (E/4984).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolutions* (E/AC.7/L.589, L.590) and *report* of the Social Committee (E/5029): see E.S.C. (L), Annexes, a.i. 2, para. 14.

(*ii*) *debate:* E/AC.7/SR.660 to 665 and 667.

(*c*) Consideration by the Council:

(*i*) *debate*: E.S.C. (L), 1771st mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1585 (L) of 21 May 1971.

(2) *Capital punishment* (agenda item 4) [37]

(*a*) Basic document: Note by the Secretary-General (E/4947 and Corr.1).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolutions* (E/AC.7/L.578, L.579) and *report* of the Social Committee (E/4993): see E.S.C.(L), Annexes, a.i. 4.

(*ii*) *debate:* E/AC.7/SR.648 to 651.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (L), 1769th mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1574 (L) of 20 May 1971.

(3) *Human rights:* (a) *Report of the Commission on Human Rights* (b) *Allegations regarding infringements of trade union rights* (agenda item 5) [38]

(*a*) Basic documents: Report of the Commission on Human Rights on its twenty-seventh session: E.S.C. (L), Supp. No. 4 (E/4949); Report of the *Ad Hoc* Working Group of Experts established under resolution 2 (XXIII) of the Commission on Human Rights (E/4953).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolution* (E/AC.7/L.596 and Rev.1, L.597 to L.602) and *report* of the Social Committee (E/5032): see E.S.C. (L), Annexes, a.i.5.

(*ii*) *debate:* E/AC.7/SR.669 to 680.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (L), 1771st mtg.

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[36] See also section II (A) (1) above.

[37] See also section VI below.

[38] See also section 2 below.

(*ii*) *resolutions adopted:* Economic and Social Council resolutions 1588 (L) [on racial discrimination in the political, economic, social and cultural spheres], 1589 (L) [on the problem of indigenous populations], 1590 (L) [on the danger of a revival of nazism and racial intolerance], 1591 (L) [on policies of *apartheid* and racial discrimination], 1592 (L) [on the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination], 1593 (L) [on the question of slavery and the slave-trade in all their practices and manipulations, including the slavery-like practices of *apartheid* and colonialism], 1597 (L) [on a preliminary draft international convention on the protection of journalists engaged in dangerous missions], 1598 (L) [on the report of the Commission on Human Rights] and 1599 (L) [on allegations regarding infringement of trade union rights], of 21 May 1971.

(4) *Narcotic drugs and psychotropic substances:* (a) *United Nations Conference for the Adoption of a Protocol on Psychotropic Substances* (b) *Report of the International Narcotics Control Board* (c) *Proposal to convene a plenipotentiary conference to amend the Convention on Narcotic Drugs, 1961* (agenda item 6) [39]

(*a*) Basic documents: Note by the Secretary-General (E/4966); Report of the International Narcotics Control Board on its work in 1970 (E/INCB/9—United Nations publication, Sales No. E.71.XI.2); Letter from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (E/4971 and Add.1).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolutions* (E/AC.7/L.583 and Rev.1; L.584 and Rev.1) and *report* of the Social Committee (E/5025): see E.S.C. (L), Annexes, a.i.6.

(*ii*) *debate:* E/AC.7/SR.657, 659, 666 and 668.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (L), 1769th and 1770th mtgs.

(*ii*) *resolutions adopted:* Economic and Social Council resolutions 1576 (L), 1577 (L) and 1578 (L), of 20 May 1971.

(5) *Transport development* . . . (b) *Preparation for the UN/IMCO Container Conference* (agenda item 9)

(*a*) Basic document: Note by the Secretary-General (E/4963).

(*b*) Consideration by the Council:

(*i*) *draft resolutions* (E/L.1391 and Rev.1 and Rev.1/Add.1 and Rev.2, L.1393 and Rev.1, L.1394, L.1398).

(*ii*) *debate:* E.S.C. (L), 1747th, 1748th, 1749th, 1751st and 1757th mtgs.

(*iii*) *resolution adopted:* Economic and Social Council resolution 1568 (L) of 13 May 1971.

(*ii*) *Documents relating to an item of legal interest* (fifty-first session) *Measures to improve the organization of the work of the Council* (agenda item 17)

(*a*) Basic document: Measures to improve the organization of the work of the Council: note by the Secretary-General (E/4986 and Add.1-9).

(*b*) Consideration by the Council:

(*i*) *draft resolutions* (E/L.1382, L.1408 and Rev.1 and 2, L.1421 and Rev.1, L.1422, L.1423, L.1431, L.1435).

(*ii*) *debate:* E.S.C. (LI), 1784th, 1789th and 1794th mtgs.

[39] See also sections 4 and 7 below.

(*iii*) *resolution adopted:* Economic and Social Council resolution 1621 A(LI) of 30 July 1971 [on the enlargement of the membership of the Economic and Social Council].

2. Commission on Human Rights [40]

(A) *Documents relating to agenda items of legal interest* (twenty-seventh session)

(1) *The possibility of preparing a draft international agreement concerning the protection of journalists engaged on dangerous missions and providing* inter alia *for the creation of a universally recognized and guaranteed identification document* (General Assembly resolution 2673 (XXV) (agenda item 9) [41]

(*a*) Basic document: Note by the Secretary-General (E/CN.4/1047).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.1149 and Rev.1, L.1182, L.1186 and Rev.1) and *report* of the Commission: E.S.C. (L), Supp. No. 4 (E/4949), Chapter IX.

(*ii*) *debate:* E/CN.4/SR.1134 and 1135.

(2) *Implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination (General Assembly resolution 2649 (XXV)* (agenda item 11)

(*a*) Basic document: Note by the Secretary-General (E/CN.4/1052).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.1168, L.1170, L.1171 and Add.1) and *report* of the Commission: E.S.C. (L), Supp. No. 4 (E/4949), Chapter IV.

(*ii*) *debate:* E/CN.4/SR.1112 to 1116.

(3) *Question of the violation of human rights and fundamental freedoms including policies of racial discrimination and segregation and of* apartheid, *in all countries, with particular reference to colonial and other dependent countries and territories, including:*

. . .

(*b*) *Study of situations which reveal a consistent pattern of violations of human rights as provided in resolution 8 (XXIII) of the Commission and resolutions 1235 (XLII) and 1503 (XLVIII) of the Economic and Social Council (chapter V of the report of the twenty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1040))*;

(*c*) *Model rules of procedure for United Nations bodies dealing with violations of human rights (Commission resolutions 8 (XXV) and 9 (XXVI)* (agenda item 12)

(*a*) Basic documents: Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1040); Model rules of procedure for United Nations bodies dealing with violations of human rights: note by the Secretary-General (E/CN.4/1021/Rev.1).

(*b*) Consideration by the Commission:

(*i*) *draft resolution* (E/CN.4/L.1180 and Rev.1) and *report* of the Commission: E.S.C. (L), Supp. No. 4 (E/4949), Chapter VII.

(*ii*) *debate:* E/CN.4/SR.1132 to 1134.

(4) *Observance in 1971 of the International Year for Action to Combat Racism and Racial Discrimination (General Assembly resolution 2544 (XXIV) and Commission resolution 3 B (XXVI)* (agenda item 13)

Comprehensive review of measures and decisions taken to eliminate racial discrimination in order to evaluate their effectiveness and the stages reached in their implementation, to

[40] See also section III 1 (i) (3) above.

[41] See also section I 1 (A) (12) above.

identify the obstacles encountered and to determine the necessity of taking further measures and decisions with a view to achieving rapid and total elimination of racial discrimination, including the policy of apartheid *and manifestations of nazism and racial intolerance (Commission resolution 3A (XXVI)* (agenda item 14)

Report of the twenty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, including:

. . .

(*b*) *Special study on racial discrimination in the political, economic, social and cultural spheres (Sub-Commission on Prevention of Discrimination and Protection of Minorities resolutions 2 and 4 (XXIII)* (agenda item 15)

Measures to be taken against nazism and racial intolerance (Commission resolution 4 (XXVI)) (agenda item 16) [42]

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, *in all countries, with particular reference to colonial and other dependent countries and territories, including:*

(*a*) *Report of the* Ad Hoc *Working Group of Experts established under resolutions 2 (XXIII), 2 (XXIV), 21 (XXV) and 8 (XXVI) of the Commission*; . . . (agenda item 12)

(*a*) Basic documents: Note by the Secretary-General (E/CN.4/1046); Special study of racial discrimination in the political, economic, social and cultural spheres: final report of the Special Rapporteur, Mr. Hernán Santa Cruz (United Nations publication, Sales No. E.71.XIV.2); Report of the twenty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1040); Note by the Secretary-General (E/CN.4/1048); Report of the *Ad Hoc* Working Group of Experts prepared in accordance with resolution 21 (XXV) of the Commission (E/CN.4/1050 and Corr.1).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.1150 to L.1154 and Add.1, L.1155 to L.1167) and *report* of the Commission: E.S.C. (L), Supp. No. 4 (E/4949), Chapter II.

(*ii*) *debate:* E/CN.4/SR. 1095 to 1112.

(5) *Question of the punishment of war criminals and of persons who have committed crimes against humanity (Commission resolution 5A (XXVI))* (agenda item 17) [43]

(*a*) Basic document: Note by the Secretary-General (E/CN.4/1053).

(*b*) Consideration by the Commission:

(*i*) *draft resolution* (E/CN.4/L.1179) and *report* of the Commission: E.S.C. (L), Supp. No. 4 (E/4949), Chapter X.

(*ii*) *debate:* E/CN.4/SR.1136.

(B) *Other documents of legal interest*

Question of the violation of human rights and fundamental freedoms

Decisions taken by United Nations bodies containing provisions relevant to the question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid* in all countries, with particular reference to colonial and other dependent countries and territories (fifth supplement to document E/4226) (E/CN.4/923/Add.4).

Study of equality in the administration of justice

Study of Equality in the Administration of Justice, by Mohammed Ahmed Abu Rannat, Special Rapporteur (E/CN.4/Sub.2/296/Rev.1, Sales No. E.71.XIV.3)

[42] See also section I 1 (A) (16) above.

[43] See also section I 1 (A) (15) above.

Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid *and colonialism*

Report submitted by Mr. Mohamed Awad, Special Rapporteur (E/CN.4/Sub.2/322).

Sub-Commission on Prevention of Discrimination and Protection of Minorities

Review of further developments in fields with which the Sub-Commission has been concerned

—Memorandum submitted by the International Labour Office (E/CN.4/Sub.2/319).

—Memorandum submitted by the United Nations Educational, Scientific and Cultural Organization (E/CN.4/Sub.2/320).

3. Commission on the Status of Women

Document of legal interest

The status of the unmarried mother: law and practice (E/CN.6/540/Rev.1, Sales. No. E.71.IV.4).

4. Commission on Narcotic Drugs [44]

Document of legal interest

Report of the Division on Narcotic Drugs for the period 1 November 1960 to 30 June 1971 (E/CN.7/537 and Add.1).

5. Economic Commission for Asia and the Far East

Document of legal interest

Proceedings of the Seminar on Mining Legislation and Administration—Mineral Resources Development Series No. 34 (E/CN.11/919, Sales No. E.70.II.F.12).

6. Economic Commission for Africa

Document of legal interest

Question of representation of Angola, Mozambique, Guinea (Bissau) and Namibia in the Economic Commission for Africa—Note by the Executive Secretary (E/CN.14/511).

7. United Nations Conferences for the Adoption of a Protocol on Psychotropic Substances [45]

Documents of legal interest

Final Act of the Conference (E/CONF.58/5 and Corr.1 and 2).

Convention on Psychotropic Substances (E/CONF.58/6 and Corr.1 and 2).

8. UN/IMCO Conference on International Container Traffic [46]

Documents of legal interest

Customs questions. Note by the Secretariat. (E/CONF.59/2).

Combined Transport Contract. Note by the Secretariat. (E/CONF.59/3 and Add.1 and 2).

IV. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Documents of legal interest

Trade and Development Board

Study on Insurance Legislation and Supervision in Developing Countries. Study by the UNCTAD Secretariat (TD/B/C.3/84 and Corr.1).

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[44] See also sections III 1 (i) (4) above and 7 below.

[45] See also sections III 1 (i) (4) and 4 above.

[46] See also section III 1 (i) (5) above and Part B, Section IX of this chapter.

United Nations Wheat Conference, 1971

Text of the International Wheat Agreement, 1971 as adopted in the final plenary, held on 20 February 1971 (TD/WHEAT.5/7) (contains the texts of the Wheat Trade Convention, 1971 and the Food Aid Convention, 1971).

Food Aid Convention, 1971: Interpretation Note (TD/WHEAT.5/8).

V. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

Documents of legal interest

UNITAR research reports

Marine Pollution Problems and Remedies by Oscar Schacter and David Swerver (No. 4).

UNITAR Peaceful Settlement Series

Peaceful Settlement of Disputes: Ideas and Proposals for Research, by Sidney D. Bailey (PS No. 1).

Analysis and prediction in international mediation, by Frank Edmead (PS No. 2).

Complementary structures of third party settlement of international disputes, by Vratislav Pechota (PS No. 3).

UNITAR Series

The Prevention of Racial Discrimination in Britain (No. 4).

Atomic Safeguards: A Study in International Verification, by Allan McKnight (No. 5).

UNITAR Lecture Series

The U.N. Charter and the Challenge of the 70's, by Kenneth Younger (No. 1).

The International Labour Organisation in the U.N. Family, by Wilfred Jenks (No. 3).

VI. UNITED NATIONS SOCIAL DEVELOPMENT RESEARCH INSTITUTE

Document of legal interest [47]

Comentary and Bibliography on Capital Punishment (UNSDRI/1971/4).

VII. SECRETARIAT [48]

Office of Public Information

The role of the Secretary-General, by U Thant (OPI/449).

VIII. INTERNATIONAL COURT OF JUSTICE [49]

1. General

Annuaire 1970-1971. No. 25. 1971.XI, 153 pp. Printed. Sales No. 354.

Yearbook 1970-1971. No. 25. 1971.XI, 153 pp. Printed. Sales No. 355.

Bibliography of the International Court of Justice. Prepared by the Library of the Court. No. 24, 1970. [47] XL pp. Printed. Sales No. 353.

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[47] See also section III 1 (i) (2) above.

[48] The recurrent publications of the Office of Legal Affairs are not listed in this Section; see the *United Nations Document Index* published by the Dag Hammarskjold Library, United Nations.

[49] For detailed information see *Yearbook* of the International Court of Justice, 1970-1971 and 1971-1972.

2. Reports of Judgments, Advisory Opinions and Orders

Reports of Judgments, Advisory Opinions and Orders, 1970 [1971]. 360, 360 pp. + 23 pp. Printed. Sales Nos. 337 and 341. Bound volume containing the Reports published in 1970, with index.

— Index. 23 pp. Printed. Sales No. 341.

Reports of Judgments, Advisory Opinions and Orders, 1971. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Request for advisory opinion). Order No. 1 of 26 January 1971. 1971. [3-4], 2, 2 pp. Printed. Sales No. 348.

— Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Request for advisory opinion). Order No. 2 of 26 January 1971. 1971. [6-7], 2, 2 pp. Printed. Sales No. 349.

— Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Request for advisory opinion). Order No. 3 of 26 January 1971. 1971. [9-10], 2, 2 pp. Printed. Sales No. 350.

— Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Revolution 276 (1970) (Request for advisory opinion). Order of 29 January 1971. 1971. [12-14], 3, 3 pp. Printed. Sales No. 351.

— Legal Consequences for States of the Continued Presence of Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970). Advisory opinion of 21 June 1971. 1971. [16-345], 330, 330 pp. Printed. Sales No. 352.

— Appeal Relating to the Jurisdiction of the ICAO Council (India *v.* Pakistan). Order of 16 September 1971. 1971. [347-348], 2, 2 pp. Printed. Sales No. 357.

— Appeal Relating to the Jurisdiction of the ICAO Council (India *v.* Pakistan). Order of 3 December 1971. 1971. [350-351], 2, 2 pp. Printed. Sales No. 358.

3. Pleadings, Oral Arguments, Documents

Pleadings, Oral arguments, Documents. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), vol. I [1971], XXV, 898 pp. Printed. Sales No. 356.

B. Legal Documents Index of Intergovernmental Organizations related to the United Nations

I. INTERNATIONAL LABOUR ORGANISATION

A. *Representative Organs*

1. *International Labour Conventions and Recommendations adopted in 1971* [50]

(*a*) Convention concerning Protection and Facilities to Be Afforded to Workers' Representatives in the Undertaking. Recommendation concerning Protection and Facilities to Be Afforded to Workers' Representatives in the Undertaking.

(*i*) Agenda of the fifty-fourth session (1970) of the International Labour Conference. Question of the protection of workers' representatives in the undertaking. Minutes of the 173rd session of the Governing Body, Geneva, 12-15 November 1968, pp. 54-55. English, French, Spanish.

[50] For convenience of reference all the preparatory work of such instruments, which normally covers a period of two years, will be given in the year in which the instrument was adopted.

(*ii*) Protection and facilities to be afforded to workers' representatives in the undertaking. International Labour Conference, fifty-fourth session (1970). Report VIII (1) [51] and Report VIII (2), 72 and 139 pages respectively. English, French, Spanish, German, Russian.

(*iii*) Protection and facilities afforded to workers' representatives in the undertaking. International Labour Conference, fifty-fourth session, Geneva, 1970. Record of Proceedings, pp. 540-553; 638-646. English, French, Spanish.

(*iv*) Agenda of the fifty-sixth session (1971) of the International Labour Conference; fifty-fourth session (1970) of the Conference. Record of Proceedings, p. 646. English, French, Spanish.

(*v*) Protection and facilities afforded to workers' representatives in the undertaking. International Labour Conference, fifty-sixth session, Geneva, 1971. Report V(1) and Report V(2), 43 and 57 pages respectively. English, French, Spanish, German, Russian.

(*vi*) Protection and facilities afforded to workers' representatives in the undertaking. International Labour Conference, fifty-sixth session, Geneva, 1971. Record of Proceedings, pp. 507-516; 677-684; 737. English, French, Spanish.

(*vii*) Convention concerning the Protection and Facilities Afforded to Workers' Representatives in the Undertaking. *Official Bulletin*, Vol. LIV, No. 3, 1971, pp. 243-246. English, French, Spanish.

(*viii*) Recommendation concerning the Protection and Facilities Afforded to Workers' Representatives in the Undertaking. *Official Bulletin*, Vol. LIV, No. 3, 1971, pp. 251-254.

(*b*) Convention concerning Protection against Hazards of Poisoning Arising from Benzene. Recommendation concerning Protection against Hazards of Poisoning Arising from Benzene.

(*i*) Meeting of Experts on the Safe Use of Benzene and Solvents Containing Benzene, Geneva, 16-22 May 1967. Document (roneoed) MEBS/1967/8 (Rev.), 25 pages, English, French, Spanish and Minutes of the 169th session of the Governing Body, Geneva, 2-3 and 30 June 1967, pp. 25; 43-44. English, French, Spanish.

(*ii*) Agenda of the fifty-sixth session (1971) of the International Labour Conference. Question concerning the protection against hazards arising from benzene. Minutes of the 174th session of the Governing Body, Geneva, 4-6 March 1969, pp. 4-5; 41-42. English, French, Spanish.

(*iii*) Protection against hazards arising from benzene. International Labour Conference, fifty-sixth session (1971), Report VI(1) [52] and Report VI(2), 44 and 117 pages respectively. English, French, Russian, Spanish.

(*iv*) Protection against hazards arising from benzene. International Labour Conference, fifty-sixth session, Geneva, 1971. Record of Proceedings, pp. 547-563; 684-692; 737-738. English, French, Spanish.

(*v*) Convention concerning Protection against Hazards of Poisoning Arising from, Benzene. *Official Bulletin*, Vol. LIV, No. 3, 1971, pp. 246-251. English, French Spanish.

(*vi*) Recommendation concerning Protection against Hazards of Poisoning Arising from Benzene. *Official Bulletin*, Vol. LIV, No. 3, 1971, pp. 255-259. English French, Spanish.

[51] This report contains a brief indication of the background of the ILO action leading to the placing of the question of the protection and facilities afforded to workers' representatives in the undertaking on the agenda of the fifty-fourth session of the Conference (1970).

[52] This report contains a brief indication of the background of the ILO action leading to the placing of the question of the protection against hazards of poisoning arising from benzene on the agenda of the fifty-sixth session of the Conference (1971), and to the applying of the single-discussion procedure to it.

2. *Amendment to the Standing Orders of the International Labour Conference*

Addition of two deputy members' seats to the Government group of the Governing Body.

(*i*) Report of the Working Party on Structure. Minutes of the 182nd session of the Governing Body, Geneva, March 1971, document GB.182/6/20. English, French, Spanish.

(*ii*) International Labour Conference, Fifty-sixth session, Geneva, 1971. Record of Proceedings, pp. 17-22; 517-529. English, French, Spanish.

(*iii*) Amendment of Article 49 of the Standing Orders of the Conference. Addition of two deputy members' seats to the Government group of the Governing Body. *Official Bulletin*, Vol. LIV, No. 3, 1971, p. 272. English, French, Spanish.

B. *Quasi-Judicial Bodies and Committees of Experts*

1. Reports of the Governing Body Committee on Freedom of Association:

(*a*) 120th, 121st and 122nd reports, 12 November 1970, 12 November 1970, 25 February 1971. *Official Bulletin*, Vol. LIV, No. 2, 1971, Supplement, 74 pages. English, French, Spanish.

(*b*) 123rd, 124th and 125th reports, 25 February 1971, 26 May 1971, 26 May 1971. *Official Bulletin*, Vol. LIV, No. 4, 1971 Supplement, 56 pages. English, French, Spanish.

2. *Reports of the Committee of Experts on the Application of Conventions and Recommendations* International Labour Conference, fifty-sixth session, Geneva, 1971:

(*a*) General report and observations concerning particular countries, and report by Pierre Juvigny, representative of the Director-General of the International Labour Office, on direct contacts with the Government of Portugal regarding the implementation of the Abolition of Forced Labour Convention, 1957 (No. 105). Report III (Part 4A), 242 and 55 pages respectively. English, French, Spanish.

(*b*) General survey on the reports relating to the Discrimination (Employment and Occupation) Convention and Recommendation, 1958. Report III (Part 4B), 62 pages. English, French, Spanish.

II. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

A. CONSTITUTIONAL QUESTIONS

Questions	*Documents*
1. Amendment to Article VII of the Constitution 53 relating to the term of office of the Director-General	CL 56/5 Add.1 and Corr.1; CL 56/LIM/3; CL 56/REP, paras. 102-110; C 71/28; C 71/LIM/37; C 71/III/PV-1 and 5; C 71/PV-15; C 71/REP, paras. 335-340; Conference resolution 12/71
2. Amendment to Article XI of the Constitution [54] relating to reports by Member Nations and Associate Members	CL 56/3, paras. 149-157; CL 56/6, paras. 13-15; CL 56/CW/REP; CL 56/PV-18; CL 56/REP, paras. 122-128; C 71/29; C 71 LIM/37; C 71/III/PV-5; C 71/REP, paras. 341-342; Conference resolution 13/71
3. Functions and term of office of the Independent Chairman of the Council—	CL 56/17, para. 6; CL 56/PV-12; CL 56/REP, paras. 99-101; CL 57/4; CL 57/REP, paras.

[53] Reproduced in this *Yearbook*, p. 122.

[54] Reproduced in this *Yearbook*, p. 123.

	Questions	*Documents*
	Amendment to Rule XXIII of the General Rules of the Organization	80-86; C 71/LIM/19, 41 and 53; C 71/III/PV-4 and 7; C 71/PV-20; C 71/REP, paras. 349-356; Conference resolution 15/71
4.	Arabic as an official language and a working language for limited purposes—Amendment to Rule XXXVIII [55] of the General Rules of the Organization	CL 56/6; CL 56/CW/REP; CL 56/PV-18; CL 56/REP, paras. 129-137; C 71/39; C 71/LIM/39; C 71/III/PV-5 and 7; C 71/PV-20; C 71/REP, paras. 357-361; Conference resolution 1/71
5.	Harmonization of the FAO *Basic Texts*	CL 56/5, paras. 38-51; CL 56/CW/REP; CL 56/PV-18; CL 57/4; CL 57/REP/CW; CL 57/PV-6; CL 57/REP, paras. 72-79; C 71/10; C 71/LIM/18 and 39; C 71/III/PV-5 and C 71/PV-21; C 71/REP, paras. 362-363; Conference resolution 17/71
6.	Increase in the number of Council seats	C 71/LIM/55; C 71/REP, para. 370; Conference resolution 20/71; CL 58/PV-2; CL 58/REP, paras. 13-14
7.	Amendments to Financial Regulations 3 and 12	CL 57/REP/CW; CL 57/REP, paras. 125-128; C 71/35; C 71/LIM/37; C 71/III/PV-6 and C 71/PV-21; C 71/REP, paras. 396-397 and Appendix G; C 71/REP—Corr.1; Conference resolutions 27/71 and 28/71
8.	People's Republic of China	CL 57/LIM/4; CL 57/PV-2 and 7; CL 57/REP, paras. 32-34 and Appendix D; C 71/INF/11; C 71/LIM/62 and 65; C 71/PV-19, 22 and 23; C 71/REP, para. 412; Conference resolution 33/71 [56]
9.	Action to implement United Nations General Assembly resolutions on decolonization and racial discrimination	CL 57/8; CL 57/PV-2 and 7; CL 57/REP, paras. 35-39; C 71/LIM/56 and 63; C 71/PV-19 and 21; C 71/REP, para. 301; Conference resolution 8/71

B. STANDING COMMITTEES OF THE COUNCIL

		Documents
Committee on Forestry and Committee on Agriculture		
	Amendment to Article V.6 of the Constitution [57] and insertion of new Rules XXXI and XXXII in the General Rules of the Organization relative to the establishment of a *Committee on Forestry* and a *Committee on Agriculture*	CL 56/3, paras. 112-122; CL 56/6, paras. 2-12; CL 56/REP, paras. 111-117; C 71/27; C 71/LIM/6, 7 and 34; C 71/III/2, 3 and 5; C 71/PV/15; C 71/REP, paras. 321-334; Conference resolutions 10/71 and 11/71
Committee on Fisheries		
2.	Suspension of paragraphs 1, 2 and 3 of Rule XXX of the General Rules of the Organization—Opening of the *Committee on Fisheries* to all interested Member Nations	C 71/30; C 71/LIM/34; C 71/III/ PV-3 and 5; C 71/PV-15, C 71/REP, paras. 343-348; Conference resolution 14/71

[55] In the meantime re-numbered Rule XL.

[56] Reproduced in this *Yearbook*, p. 107.

[57] *Ibid.*, p. 122.

		Documents
Committee on Commodity Problems		
3.	Suspension of paragraphs 1, 2 and 3 of Rule XXIX of the General Rules of the Organization—Change in the structure of the *Committee on Commodity Problems*	CL 56/19; CL 56/PV-12; CL 56/REP, paras. 118-121; CL 57/REP/CW-Sup.1; CL 57/PV-5; CL 57/REP, paras. 87-88; C 71/LIM/20 and 41; C 71/III/PV-3 and 5; C 71/PV-15; C 71/REP, paras. 364-366; Conference resolution 18/71
	Nomenclature of subsidiary bodies of the Committee on Commodity Problems and Membership of Commodity Study Groups —Amendments to paragraph 9 of Rule XXIX of the General Rules of the Organization and to Financial Regulation 5.9	CL 56/5 and 6; CL 57/2; CL 57/REP/CW-Sup.1; CL 57/REP, paras. 89-94; C 71/LIM/20 and 41; C 71/III/PV-4; C 71/PV-21; C 71/REP, paras. 367-369; Conference resolution 19/71

C. BODIES ESTABLISHED UNDER ARTICLE VI OF THE CONSTITUTION

	Body	*Documents*
1.	Amendments to the Rules of Procedure of the *European Commission on Agriculture*	CL 56/5, paras. 4-8; CL 56/REP, paras. 148-151
2.	Establishment of a *Committee for Inland Fisheries of Africa*	CL 56/4; CL 56/PV-5 and 18; CL 56/REP, para. 20; Council resolution 1/56
3.	*FAO/WHO Codex Alimentarius Commission*—Elaboration of regional standards and alignment of procedures of FAO/WHO Committee of Government Experts on the Code of Principles concerning Milk and Milk Products	C 71/32 and Corr.1; C 71/III/PV-6; C 71/PV-21; C 71/REP, paras. 376-379
4.	Establishment of a *Regional Food and Nutrition Commission for the Near East*	CL 57/13 and Corr.1; CL 57/REP, paras. 97-98; Council resolution 2/57
5.	Directory of FAO Statutory Bodies and Panels of Experts as of 1 May 1971	MI/B5705/671/1, 166 pp. with Corr. 4 p.

D. CONVENTIONS AND AGREEMENTS

Agreements	*Documents*
Statutory Report on the status of conventions and agreements and amendments thereto	C 71/31 and Corr.1; C 71/REP, paras. 371-374

E. SUBSTANTIVE LEGAL QUESTIONS [58]

1. AGRARIAN AND WATER LEGISLATION

	Questions	*Documents*
(*a*)	Caponera, D. A.: FIJI: Water (and land) policy, administration and legislation with particular reference to the institutions required for the Navua and Rewa schemes	AGS: SF/FIJ/UK 55, Technical Report, v + 31 p., 1970. Multilithed
(*b*)	Caponera, D. A. and Rajah, K. C.: Cyprus: Water legislation and management	Technical Report, 23 p. + 2 p. Annexes. Mimeographed

[58] Unless indicated otherwise, the documents listed have been prepared by, or in cooperation with, the Legislation Branch of the Legal Office of FAO.

Questions	*Documents*
(*c*) Burdon, D. J., Caponera D. A. and Hrabovszky, J. P.: Groundwater's role in social and economic development: an example based on FAO's near East regional activities on groundwater development and use	AGL: Misc/71/8, 29 p., 13 April 1971. Multilithed
(*d*) Agreement on water utilization and conservation in the Lake Chad Basin (Draft and commentary)	AGL: SF/REG/79, 19 p., May 1971. Mimeographed
(*e*) Herrero-Ayllón, E: Informe al Gobierno de El Salvador sobre Reglamento General de la Ley de Riego y Avenamiento	OAA/PNUD No. AT 2972, vi + 41 p., 1971. Multilithed
(*f*) Caponera, D. A.: Gobierno y administración de agua	Item IV—"Primer Seminario sobre Legislación de Aguas en Centro-América"-San Salvador, 4-8 October 1971. 10 p. Multilithed
(*g*) Caponera, D. A.: Modernas tendencias en materia de política, administración y legislación de aguas	Item VII of the "Primer Seminario sobre Legislación de Aguas en Centro-America"-San Salvador 4-8 October 1971. 9 p. + 5 pages of Annexes. Multilithed
(*h*) Caponera, D. A. and Rajah, K. C.: Water resources policy administration and legislation (Report prepared for the Nakdong River Basic Project)	AGL:KOR 16, Basic Study X, iv + 141 p., 1971. Multilithed
(*i*) FAO Special Committee on Agrarian Reform. Report of the Special Committee on Agrarian Reform. [59]	C 71/22 and Supp. 1; C 71/I/PV-11 to 15 and 18; C 71/PV-21; C 71 REP, paras. 105-114, 148, 157 and 273; Conference resolution 3/71
(*j*) A summary of the current activities of the Food and Agriculture Organization with respect to legal and institutional aspects of management of water resources including pollution control	Legislation Branch Background Paper No. 2, 9 p., December 1971. Mimeographed

2. Forestry, Wildlife and Fisheries Legislation

Questions	*Documents*
(*a*) Kropp, G.: Wildlife and national park legislation in Asia	Legislative Studies No. 1, v + 52 p., July 1971. Multilithed
(*b*) Kropp, G.: Wildlife and national park legislation in Latin America	Legislative Studies No. 2, iv + 46 p., July 1971. Multilithed
(*c*) Kropp, G.: Vicuña conservation legislation	Legislative Studies No. 3, iii + 8 p., July 1971. Multilithed
(*d*) Limits and status of the territorial sea, exclusive fishing zones, fishery conservation zones and the continental shelf (with particular reference to fisheries)	FID/C/127, v + 33 p., 1971. Multilithed
(*e*) Cooperation among international agencies in relation to fisheries—Activities within	COFI/71/9(b); CL 56/4, paras. 63-71

[59] The Special Committee was serviced by the Rural Institutions Division of FAO.

Questions	*Documents*
the United Nations system—First session of the Enlarged Sea-Bed Committee acting as Preparatory Committee for the Conference on the Law of the Sea (Geneva, 1-26 March 1971)	
(*f*) Steps required to put management measures into effect in the Eastern Central Atlantic	CECAF/71/7
(*g*) Preparations for the Third Conference on the Law of the Sea	CECAF/71/13
(*h*) Consultation on the conservation of fishery resources and the control of fishing in Africa—Effectiveness of existing management machinery	FID:CFRA/71/5

3. Animal and Plant Legislation

Questions	*Documents*
(*a*) Recent bilateral conventions and agreements in the veterinary field: Synopsis of essential provisions	AGA:misc/71/10, ii + 60 p., 16 July 1971. Multilithed
(*b*) FAO Working Party of Experts on the Official Control of Pesticides: Section A (Legislation); a model scheme for the establishment of national organizations for the official control of pesticides	AGP:CP 28. Rome 1970, vii + 75 p.
(*c*) FAO Plant Protection Committee for the South East Asia and Pacific Region. Digest of plant quarantine regulations. Suppl. III: Southeast Asia and Pacific region. Compiled by Secretariat of Plant Protection Committee in collaboration with national plant quarantine services in the region; based on the work of T. H. Harrison. Bangkok	No. RAFE 1. (Available from FAO Regional Office in Bangkok). 1971, loose-leaf edition with non-continuous pagination

4. Codex Alimentarius Food Standards [60]

Questions	*Documents*
(*a*) Codex Mark or Symbol	ALINORM 71/31, para. 12
(*b*) Information on the activities of other international organizations working on the standardization of foods and related matters	ALINORM 71/31, paras. 30-54
(*c*) The idea of a General Standard	ALINORM 71/27; ALINORM 71/31, paras. 247-249

5. Human Environment

Questions	*Documents*
Environment, annotated bibliography, author and subject index; natural resources and the human environment: FAO publications and documents (1967-1970)	DC/SP 21, 704 p., 1971

[60] Prepared by the Secretariat of the Codex Alimentarius Commission.

F. PERIODICALS

— "Food and Agricultural Legislation"—Printed—Published twice yearly.

— "Current Food Additives Legislation"—Multilithed—10 issues per year.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

A. CONSTITUTIONAL AND PROCEDURAL QUESTIONS

(a) *Executive Board*

(1) Terms of reference of the Executive Board's Committees for 1971-1972. *Document 87EX/12*, 29 April 1971, 7 p., *87 EX/Decisions 3.2*, April-May 1971. English, French, Russian, Spanish.

(2) Special Committee: Possible terms of reference for the Special Committee in 1971-1972. Memorandum from the Chairman of the Executive Board. *Document 87EX/SP/3*, 31 March 1971, 5 p. English, French, Russian, Spanish.

(3) Consultation pursuant to Rule 54 of the Rules of Procedure of the Executive Board. *Document 88EX/Decisions 7.10*, October-November 1971, English, French, Russian, Spanish.

(4) Method of election and duration of term of office of members of the Executive Board. *Document 88EX/2, Annex V*, 18 October 1971, 4 p., *88EX/Decisions 3.1.II*, October-November 1971. English, French, Russian, Spanish.

(b) *Other*

(1) Report of the Special Committee on its examination of the Report of the Director-General on the Activities of the Organization. *Document 87EX/6*, 14 April 1971, 24 p., *87EX/Decisions 4.1.2*, April-May 1971. English, French, Russian, Spanish.

(2) Report on the implementation of 16 C/Resolution 1.242 concerning the international university. *Document 87EX/8*, 19 April 1971, 5 p., and Annex, *87EX/32*, 11 May 1971, pp. 6-10, *87EX/Decisions 4.2.3*, April-May 1971. English, French, Russian, Spanish.

(3) Acceptance of donations, bequests and subventions. *Document 87/EX/28*, 26 March 1971, 2 p., *87EX/Decisions 6.2*, April-May 1971, *88EX/26*, 19 August 1971, 2 p., *88EX/Decisions 7.4*, October-November 1971. English, French, Russian, Spanish.

(4) Co-operation with the National Commissions. *Document 88EX/14*, 6 September 1971, 9 p., and Annexes, *88EX/14, Add.*, 5 October 1971, 1 p., and Annex, *88EX/Decisions 4.5.2*, October-November 1971. English, French, Russian, Spanish.

(5) Celebration of the 500th anniversary of the birth of Nicolas Copernicus. *Document 88EX/37*, 18 October 1971, 2 p., *88EX/44, Part II*, 27 October 1971, pp. 20-21, *88EX/Decisions 8.2*, October-November 1971. English, French, Russian, Spanish.

(6) Procedures concerning the invitation of international non-governmental organizations in Category C to sessions of the General Conference. *Document 88EX/2*, 19 July 1971, pp. 21-23, *88EX/Decisions 3.1.V*, October-November 1971. English, French, Russian, Spanish.

B. MEMBER STATES

(1) Frequency and form of the general reports to be presented by Member States in accordance with Article VIII of the Constitution and treatment of these reports. *Document 87EX/4*, 26 March 1971, 2 p., *87EX/Decisions 3.3*, April-May 1971. English, French, Russian, Spanish.

(2) Application of Article IV.C.8(b) and (c) of the Constitution as regards voting by Member States which are in arrears in the payment of their contributions. *Document 87EX/21*, 29 March 1971, 3 p., *87EX/Decisions 6.1*. English, French, Russian, Spanish.

(3) Participation of China in the execution of the programme. *Document 88EX/48*, 27 October 1971, 2 p., *88EX/48, Add.*, 27 October 1971, 1 p., and Annex, *88EX/48, Add.2*, 28 October 1971, 2 p., *88EX/49*, 29 October 1971 2 p., *88 EX/Decisions 9*. [61] English, French, Russian, Spanish.

(4) Submission of reports by Member States and method of their examination by the Organization (Articles IV.B.6 and VIII of the Constitution). *Document 88EX/2*, 19 July 1971, pp. 16-20, *88EX/Decision 3.1.IV*, October-November 1971. English, French, Russian, Spanish.

C. RELATIONS WITH OTHER ORGANIZATIONS

(a) *United Nations Relief and Works Agency*

Co-operation with the United Nations Relief and Works Agency (UNRWA). *Document 87EX/9*, 14 April 1971, 10 p., and Annex, *87EX/9, Add.1*, 4 May 1971, 2 p., *87EX/9, Add.2*, 4 May 1971, 2p., *87EX/Decisions 4.2.4*, April-May 1971, *88EX/3*, 31 August 1971, 6 p., *88EX/3, Add.1*, 30 September 1971, 2 p., *88EX/3, Add.2*, 5 October 1971, 2 p., *88EX/3, Add.3*, 15 October 1971, 1 p., *88EX/3, Add.4*, 21 October 1971, 1 p., *88EX/Decisions 4.1.1*, October-November 1971. English, French, Russian, Spanish.

(b) *International Labour Organisation*

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(c) *International non-governmental organizations*

(1) Classification of international non-governmental organizations and Report of the Executive Board's Committee on Non-Governmental Organizations. *Document 87EX/19*, 14 April 1971, 5 p., and Annex, *87EX/29*, 12 May 1971, 6 p., and Appendix, *87EX/Decisions 5.3*, April-May 1971. English, French, Russian, Spanish.

(2) Investigation of non-governmental organizations with respect to co-operation in any way with the South African Government's policy of apartheid. *Documents 87EX/20*, 19 April 1971, 2 p., and Annexes, *87EX/20, Add.*, 4 May 1971, 38 p., *87EX/Decisions 5.4.*, April-May 1971. English, French, Russian, Spanish.

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(4) Subventions to certain international non-governmental organizations. *Document 88EX/22* 2 September 1971, 4 p., and Annexes, *88EX/44, Part III*, 27 October 1971 pp. 10-12, *88EX/Decisions 6.6*, October-November 1971. English, French, Russian, Spanish.

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Relations with the Customs Co-operation Council (C.C.C.). *Document 88EX/19*, 3 September 1971, 1 p., and Annexes, *88EX/Decisions 6.4*, October-November 1971. English, French, Russian, Spanish.

(e) *Arab States Broadcasting Union*

Co-operation with the Arab States Broadcasting Union (ASBU). *Document 88EX/36*, 27 August 1971, 2 p., and Annexes, *88EX/Decisions 6.7*, October-November 1971. English, French, Russian, Spanish.

[61] Reproduced in this *Yearbook*, p. 107.

(f) *General*

Recent decisions of the organizations of the United Nations System of interest to UNESCO. *Document 87EX/17*, 19 April 1971, 15 p., and Annexes, *87EX/Decisions 5.1*, April-May 1971, *88EX/16*, 14 September 1971, 14 p., and Annexes, *88EX/16 Corr.*, 20 September 1971, 1 p. (English only), *88EX/Decisions 6.1*, October-November 1971. English, French, Russian, Spanish.

D. INTERNATIONAL REGULATION: CONVENTIONS AND RECOMMENDATIONS

(a) *Convention for the Protection of Cultural Property in the Event of Armed Conflict*

(1) Report on the results of the consultation of States Parties concerning the advisability of convening a meeting of the High Contracting Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict. *Document 87EX/14*, 14 April 1971, 2 p., and Annexes, *87EX/Decisions 4.4.1*, April-May 1971. English, French, Russian, Spanish.

(2) Report of the Government of Jordan on the violation of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. *Document 87EX/31*, 7 May 1971, 5 p., and Annexes, *88EX/46*, 13 October 1971, 5 p., *88EX/47*, 18 October 1971, 6 p., *88EX/Decisions 4.3.1*, October-November 1971. English, French, Russian, Spanish.

(3) Observations of the Government of Israel on the alleged violations of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. *Document 87EX/34*, 10 May 1971, 2 p., *87EX/35*, 11 May 1971, 3 p., *88EX/Decisions 4.3.1*, October-November 1971. English, French, Russian, Spanish.

(b) *Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States parties to the Convention against Discrimination in Education*

Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States parties to the Convention against Discrimination in Education. (First meeting, Paris, 1-3 February 1971)

— Report. *Document CGOC/I/3*, 17 February 1971, 2 p., and Annexes. English, French, Spanish.

— Draft Rules of Procedure of the Conciliation and Good Offices Commission (as established by the Commission during its first meeting). *Document CGOC/I/3, Annex II*, 17 February 1971, 17 p. English, French, Spanish.

(c) *International instruments for the protection of monuments, groups of buildings and sites*

Preliminary report drawn up in accordance with Article 10.1 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4 of the Constitution. *Document SHC/MD/17*, 30 June 1971, 28 p., and Annexes. English, French, Russian, Spanish.

E. CONFERENCES AND OTHER MEETINGS

(1) Invitations to the Conference of Ministers of Education and those responsible for the Promotion of Science and Technology in relation to Development in Latin America and the Caribbean. *Document 87EX/7*, 14 April 1971, 5 p., *87EX/32*, 11 May 1971, pp. 5-6, *87EX/Decisions 4.2.2*, *88EX/7*, 4 October 1971, 2 p., and Annex, *88EX/44, Part II*, 27 October 1971, pp. 3-4, *88EX/Decisions 4.1.4*, October-November 1971. English, French, Russian, Spanish.

(2) Invitations to a Preparatory Conference of Governmental Experts to Formulate a Draft Convention on the Legal Status of Ocean Data Acquisition Systems (ODAS). *Document 87EX/13*, 23 April 1971, 7 p., *87EX/Decisions 4.3.2*, April-May 1971. English, French, Russian, Spanish.

(3) Invitations to the Intergovernmental Conference on Cultural Policies in Europe. *Document 87EX/30*, 26 March 1971, 4 p., *87EX/Decisions 4.4.2*, April-May 1971. English, French, Russian, Spanish.

(4) Invitations to the Third World Conference on Adult Education (1972). *Document 88EX/4*, 27 August 1971, 4 p., *88EX/44*, Part II, 27 October 1971, pp. 1-3, *88EX/Decisions 4.1.2*, October-November 1971. English, French, Russian, Spanish.

(5) UNESCO's participation in the preparation of the United Nations Conference on the Human Environment. *Document 88EX/10*, 6 September 1971, 6 p., *88EX/44, Part II*, 27 October 1971, pp. 5-8, *88EX/Decisions 4.2.2*, October-November 1971. English, French, Russian, Spanish.

(6) Invitations to the Meeting of a Special Committee of Government Experts to prepare a draft convention and a draft recommendation to Member States concerning the protection of monuments, groups of buildings and sites. *Document 88EX/11*, 6 August 1971, 3 p., *88EX/Decisions 4.3.2*, October-November 1971. English, French, Russian, Spanish.

F. PERSONNEL QUESTIONS

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G. COPYRIGHT AND NEIGHBOURING RIGHTS

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— Comments and proposals of States. *Document UNESCO/WIPO/PHON/3*, 10 February 1971, 1 p., and Annexes, *UNESCO/WIPO/PHON/3, Add.1*, 26 February 1971, 2 p. English, French, Russian, Spanish.

— Proposal from France—Draft convention for the protection of producers of phonograms against unauthorized duplication. *Document UNESCO/WIPO/PHON/4*, 2 March 1971, 2 p. English, French, Russian, Spanish.

— Draft convention for the protection of phonograms against unauthorized duplication—Draft of Articles I to V established on the basis of the discussions of the Working Group. *Document UNESCO/WIPO/PHON/5*, 3 March 1971, 2 p. English, French, Russian, Spanish.

— Final Report. *Document UNESCO/WIPO/PHON/7*, 25 March 1971, 24 p., and Annexes. English, French, Russian, Spanish.

(2) Report by the Director-General on the work of the Committee of Governmental Experts on the Protection of Phonograms. *Document 87EX/15*, 14 April 1971, 3 p., *87EX/Decisions 4.5.1*, April-May 1971. English, French, Russian, Spanish.

(3) Committee of Governmental Experts on Problems in the Field of Copyright and the Protection of Performers, Producers of Phonograms and Broadcasting Organizations raised by Transmission via Space Satellites, Lausanne, 21-30 April 1971

— Introductory Report prepared by the UNESCO Secretariat. *Document UNESCO/WIPO/SAT/3*, 19 March 1971, 10 p. English, French, Russian, Spanish.

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— Study of problems in the field of copyright raised by radio and television transmission via communication satellites (By Roger Fernay). *Document UNESCO/WIPO/SAT/5*, 1 February 1971, 14 p. English, French, Russian, Spanish.

— Study of the problems arising from wireless and television broadcasts transmitted by space satellites in relation to the protection of performers (by Rolf Rembe). *Document UNESCO/WIPO/SAT/6*, 26 February 1971, 7 p., English, French, Russian, Spanish.

— Study on the problems arising from wireless and television broadcasts transmitted by space satellites in relation to the protection of producers of phonograms (By Stephen M. Stewart LL.D.). *Document UNESCO/WIPO/SAT/7*, 26 February 1971, 16 p. English, French, Russian, Spanish.

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— Report. *Document UNESCO/WIPO/SAT/22*, 30 April 1971, 16 p., and Annexes. English, French, Russian, Spanish.

(4) Report by the Director-General on the work of the Committee of Government Experts on Problems in the Field of Copyright and the Protection of Performers, Producers of Phonograms and Broadcasting Organizations raised by Transmission via Space Satellites. *Document 87EX/32*, 11 May 1971, pp. 15-16, *87EX/Decisions 4.5.2*, April-May 1971, *88EX/13*, 16 August 1971, 5 p., and Annexes, *88EX/13 Corr.*, 30 September 1971, 1 p., *88EX/Decisions 4.5.1*, October-November 1971. English, French, Russian, Spanish.

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— Comments by States Parties to the Universal Copyright Convention on the proposals for revision of the Convention. *Document INLA/UCC/5*, 14 May 1971, 1 p., and Annex, *INLA/UCC/5, Add.1*, 2 June 1971, 1 p., and Annex. English, French, Spanish.

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(7) Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Third Session (Geneva, November 1 and 2, 1971)

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(8) Intergovernmental Copyright Committee, Eleventh Session, Geneva, November 1971

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— Report of the Secretariat of the Committee on the work of the Conference for the revision of the Universal Copyright Convention. *Document IGC/XI/3*, 8 October 1971, 7 p., and Annex. English, French, Spanish.

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— Development of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome 1961). *Document IGC/XI/7*, 4 October 1971, 3 p. English, French, Spanish.

— Transmissions via space satellites. *Document IGC/XI/8*, 4 October 1971, 2 p., and Annex. English, French, Spanish.

— Recommendations adopted by international organizations in the field of copyright or which may affect copyright. *Document IGC/XI/10*, 8 September 1971, 3 p., and Annexes. English, French, Spanish.

— Draft report presented by the Secretariat of the Committee. *Document IGC/XI/12*, 5 November 1971, 6 p., and Annex. English, French, Spanish.

— Draft report of the joint meetings of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee, submitted by the Secretariats of WIPO and UNESCO. *Document IGC/XI/13*, 5 November 1971, 11 p., and Annex. English, French, Spanish.

(9) UNESCO Copyright Bulletin, Quarterly Review, Vol. V, Nos. 1, 2, 3, 4 (1971). *Document INLA.71/III.55-58*, 1971. English, French, Spanish.

H. HUMAN RIGHTS

Assistance to refugees from colonial territories and other peoples striving to liberate themselves from colonial domination and all forms of apartheid. *Document 87EX/10*, 29 March 1971, 12 p., *87EX/Decisions 4.2.5*, April-May 1971. English, French, Russian, Spanish.

I. OCEANOGRAPHY

Second session of the *Ad Hoc* Working Group of Governmental Experts to draft new Rules of Procedure for the Intergovernmental Oceanographic Commission (Paris, 18-22 October 1971)

— Recommendation 12.6 of the 12th Meeting of the 10C Bureau with the Consultative Council: Rules of Procedure. *Document SC/10C.W.G.8 (II)/2*, August 1971, 1 p. English, French, Russian, Spanish.

— Draft New Rules of Procedure. *Document SC/10C-VII/15, Annex II*, 26 October 1971, 20 p. English, French, Russian, Spanish.

J. SPACE COMMUNICATIONS

Meeting of Experts on International Professional Arrangements for Space Broadcasting, UNESCO House, Paris, 5 to 8 October 1971.

Final Report. Document *COM-71/CONF.5/8*, 18 November 1971, 8 p., and Annex. English, French.

IV. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(1) AMENDMENTS TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

[*Article 50 (a)*. — An Extraordinary Session of the Assembly met at United Nations Headquarters in New York on 11-12 March, and, on 12 March, adopted an amendment increasing the number of seats in the Council from 27 to 30. [62] The amendment not having come into force at the time of the 18th session of the Assembly (June-July), that body considered the question whether to proceed with the selection of three States to fill the three seats added by the amendment to Article 50 (*a*) when the amendment would eventually come into force, and reached a negative decision. However, the Assembly did invite Contracting States which had not already done so to ratify the amendment to Article 50 (*a*) as a matter of urgency and requested the Council to convene an Extraordinary Session of the Assembly to fill the three additional seats as soon as possible after the deposit of the eightieth instrument of ratification if it considered such action opportune at that time.

Article 56. — During its 18th session, the Assembly adopted, on 5 July, an amendment to Article 56 of the Convention increasing the number of seats on the Air Navigation Commission from 12 to 15. [63]

Article 7. — A proposal of Sweden for the deletion of the second sentence of Article 7 came before the 18th session of the Assembly. Though the Executive Committee, on a simple majority vote, recommended the adoption of the amendment, the two-thirds vote prescribed in Article 94 (*a*) of the Convention was not obtained in the plenary.]

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, pp. 83-84. English, French, Spanish.

(2) SETTLEMENT OF DISPUTES BETWEEN CONTRACTING STATES— PAKISTAN *versus* INDIA

[India having suspended the flights of Pakistani aircraft over its territory, the Government of Pakistan, on 10 March 1971, filed with the Organization an application under Article 2 of the Rules for the Settlement of Differences (Doc 7782). This application related, inter alia, to "disagreements" between the two Governments in the sense of clauses (*a*) and (*b*) of paragraph (1) of Article 1 of the Rules for the Settlement of Differences. On 8 April the Council invited the two parties immediately to negotiate directly for the purpose of settling the dispute or narrowing the issues; decided, subject to the consent of the parties concerned, to render any assistance likely to further the negotiations; and fixed at eight weeks the period within which India was invited to present its counter-memorial.

Also, on 10 March 1971, the Government of Pakistan filed with the Organization a complaint under Article 21 of the Rules for the Settlement of Differences. The President of the Council, acting under Article 28 (3) of the Rules fixed an eight-week period for the filing of the counter-memorial relating to the complaint.

On 1 June, India filed preliminary objections in which it questioned the jurisdiction of the Council to handle the above-mentioned disagreements and complaint. Pakistan's reply to the preliminary objections was dated 5 July. After hearing arguments of India and Pakistan from 27 to 29 July, the Council on 29 July, rejected the preliminary objections and hence reaffirmed its competence to consider the application and complaint of Pakistan.

[62] Reproduced in this *Yearbook*, p. 141.

[63] *Ibid.*, p. 142.

On 30 August, India filed an application in the International Court of Justice appealing from the Council decisions of 29 July. On 18 October, the Council considered the question whether India's appeal to the International Court of Justice had the effect of suspending the Council's decision of 29 July, in view of the second sentence of Article 86 of the Convention which provides: "On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided." After discussion, the Council decided to defer further consideration of the matter until later.]

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, pp. 84-85. English, French, Spanish.

(3) Notification of Emergency—India and Pakistan

[Early in December, cables from India and Pakistan placed before the Council indicated that, due to the emergency which had arisen, they might not find it possible to comply with any or all provisions of the Convention and the International Air Services Transit Agreement. On 6 December, the Council decided to forward copies of the cables to Contracting States and requested the Governments of India and Pakistan that, upon termination of the emergency, notice of that fact be sent to the Council.]

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, p. 85. English, French, Spanish.

(4) Guatemala City Protocol to Amend the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (12 October 1929) as Amended by the Hague Protocol (28 September 1955)

[A Diplomatic Conference on the Revision of the Warsaw Convention as Amended by the Hague Protocol met at Guatemala City from 9 February to 8 March, at the invitation of the Government of Guatemala and adopted the Protocol to amend that instrument.]

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, p. 85. English, French, Spanish.

(5) Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation [64]

[A Diplomatic Conference met at Montreal from 8 to 23 September, to consider a draft Convention, prepared by the Legal Committee in London in September-October 1970, and adopted the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.]

Doc 8966-Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. Signed at Montreal on 23 September 1971. English, French, Spanish.

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, p. 85. English, French, Spanish.

(6) Rules of Procedure for the Council

[On 12 May, the Council amended its Rules of Procedure to provide that a roll-call vote shall be taken in the English alphabetical order and the names of the Members, beginning with the Member whose name is drawn by a lot by the President.]

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, p. 86. English, French, Spanish.

(7) Standing Rules of Procedure of the Assembly—Voting by secret ballot

[At its 18th session, the Assembly amended Rule 48 (Secret Ballot) of its Standing Rules of Procedure so as to provide for secret ballot to determine the wishes of the Assembly in the event of opposition to a request for a secret ballot.]

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[64] *Ibid.*, p. 143.

Doc 8982 A19-P/1 Annual Report of the Council to the Assembly for 1971, p. 87. English, French, Spanish.

(8) ANNEXES TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, PROCEDURES FOR AIR NAVIGATION SERVICES (PANS), REGIONAL SUPPLEMENTARY PROCEDURES (SUPPS)

[See "ICAO Technical Publications, Current Edition" which is published in the ICAO Bulletin.]

V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

(*i*) ICSID/3/Rev.10—List of the Contracting States and other signatories of the Convention [on the Settlement of Investment Disputes between States and Nationals of Other States] (As of April 1, 1971).

(*ii*) AC/71/4—Proceedings: Fifth Annual Meeting September 20, 1971.

(*iii*) Fifth Annual Report 1970/1971.

VI. INTERNATIONAL DEVELOPMENT ASSOCIATION

Board of Governors Resolution No. 77: Additions to Resources; Third Replenishment.

VII. INTERNATIONAL MONETARY FUND

Central Rates and Wider Margins—A Temporary Régime. IMF Executive Board Decisions, December 18, 1971. *International Financial News Survey*, 23:419, December 22-30, 1971.

Selected Decisions of the Executive Director and Selected Documents, Fifth Issue, July 10, 1971.

VIII. WORLD METEOROLOGICAL ORGANIZATION

Sixth World Meteorological Congress (Geneva, 5-30 April 1971). Abridged Report with Resolutions (WMO—No. 292).

Questions concerning the Convention [of the World Meteorological Convention]—Report on the amendments to Article 28 of the Convention, submitted by the Executive Committee (Cg-VI/Doc.3).

IX. INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION [65]

Report of the fourth session of the Joint IMCO/ECE Meeting to study the Draft Convention on the Combined Transport Contract (document CTC IV/18/Rev.1) (containing in Annex II the text

[65] See also sections III 1 (i) (5) and III 8 in Part A of this chapter.

of the draft Convention on the International Combined Transport of Goods (TCM Convention), together with a summary of the discussions leading to the adoption by the meeting of the various draft articles, proposals, etc.).

Report of the Third Joint IMCO/ECE Meeting to study the Draft International Convention for Safe Transport Containers (document CSC/22) (containing in Annex II the final draft text of the International Convention for Safe Transport Containers together with a summary of the discussions leading to the adoption by the meeting of the various draft articles, proposals, etc.).

X. INTERNATIONAL ATOMIC ENERGY AGENCY

1. Statute and Membership of the Agency

Action taken by States in connection with the Statute

(*a*) The Agency' membership at the end of 1971 stood at 102.

(*b*) The official designation of the "United Arab Republic" was changed to "The Arab Republic of Egypt" with effect from 2 September 1971.

(*c*) The official designation of "The Democratic Republic of the Congo" was changed to "The Republic of Zaire" with effect from 27 October 1971.

(*d*) By 31 December 1971, 23 of the 102 Member States of the Agency had accepted the amendment to Article VI.A—D of the Statute of the Agency. This amendment has been approved by the General Conference of the IAEA on 28 September 1970 by Resolution GC(XIV)/RES/272. [66] It will enter into force when it has been accepted by two-thirds of all the Members in accordance with their respective constitutional processes, as provided for by Article XVIII.C.(ii) of the Statute.

2. Agreements

Co-operation Agreement between the International Atomic Energy Agency and the League of Arab States (INFCIRC/25/Add.3); entered into force on 15 December 1971.

See also the agreements under sub-section (b) p. 36 of this *Yearbook*.

3. Other Documents

IAEA Safety Standards:

Code of Practice for the Safe Operation of Critical Assemblies and Research Reactors (Part I—Code of Practice, Part II—Technical Appendix and Bibliography) 1971 edition, sponsored by IAEA and WHO; IAEA Safety Series No. 35, Vienna, March 1971, 193 p. STI/PUB/225.

Disposal of Radioactive Wastes into Rivers, Lakes and Estuaries. Report sponsored by IAEA and WHO: IAEA Safety Series No. 36, 1971 edition. STI/PUB/283.

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[66] See *Juridical Yearbook*, 1970, p. 135.

Chapter X

LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

MAIN HEADINGS

A. INTERNATIONAL ORGANIZATIONS IN GENERAL
   1. General
   2. Particular questions

B. UNITED NATIONS
   1. General
   2. Particular organs
   3. Particular questions or activities

C. INTER-GOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
   1. General
   2. Particular organizations

A. INTERNATIONAL ORGANIZATIONS IN GENERAL

1. *General*

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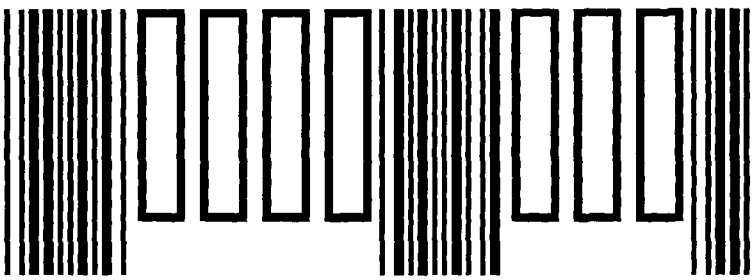

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