ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW

5

INTERNATIONAL ORGANIZATIONS IN GENERAL
UNIVERSAL INTERNATIONAL ORGANIZATIONS AND COOPERATION

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UNIVERSAL INTERNATIONAL ORGANIZATIONS AND COOPERATION

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INTRODUCTORY NOTE

The 104 articles in the fifth instalment of the Encyclopedia of Public International Law are devoted to international governmental organizations and international cooperation of a universal nature. Regional organizations and cooperation will be dealt with in the sixth instalment. Here, as in other instalments, articles which relate to several subject areas are included in the most appropriate instalment. Thus, the International Court of Justice is dealt with in Instalment 1 which deals with the settlement of disputes.

To facilitate the use of the Encyclopedia, two kinds of cross-references are used. Arrow-marked cross-references in the articles themselves refer to other entries, and are generally inserted at the first relevant point in an article (e.g. The case was submitted to the → International Court of Justice). For other topics for which a separate entry might be expected but which are discussed elsewhere or under a heading which does not immediately suggest itself, the title of the topic appears in the alphabetical sequence of articles with a cross-reference to the article where it is discussed (e.g. **INQUIRY** *see* Fact-Finding and Inquiry).

At the end of each instalment there is an updated list of articles for the entire Encyclopedia. Articles which have already appeared have a number in brackets identifying the instalment in which they may be found.

The manuscripts for this instalment were finalized in autumn 1982.

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LIST OF ENTRIES

LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
AFDI	Annuaire Français de Droit International
AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
AnnIDI	Annuaire de l'Institut de Droit International
Annual Digest	Annual Digest and Reports of International Public Law Cases
Australian YIL	Australian Yearbook of International Law
AVR	Archiv des Völkerrechts
BILC	British International Law Cases (C. Parry, ed.)
BYIL	British Year Book of International Law
CahDroitEur	Cahiers de Droit Européen
CanYIL	Canadian Yearbook of International Law
CJEC	Court of Justice of the European Communities
Clunet	Journal du Droit International
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
ColJTransL	Columbia Journal of Transnational Law
Comecon	Council for Mutual Economic Aid
CTS	Consolidated Treaty Series (C. Parry, ed.)
DeptStateBull	Department of State Bulletin
DirInt	Diritto Internazionale
EC	European Community *or* European Communities
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council of the United Nations
ECR	Reports of the Court of Justice of the European Communities (European Court Reports)
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Association
ESA	European Space Agency
ETS	European Treaty Series
EuR	Europa-Recht
Euratom	European Atomic Energy Community
Eurocontrol	European Organization for the Safety of Air Navigation
FAO	Food and Agriculture Organization of the United Nations
Fontes	Fontes Iuris Gentium
GAOR	General Assembly Official Records
GATT	General Agreement on Tariffs and Trade
GYIL	German Yearbook of International Law
Harvard ILJ	Harvard International Law Journal
IAEA	International Atomic Energy Agency
IATA	International Air Transport Association
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross

ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IDI	Institut de Droit International
IFC	International Finance Corporation
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organisation
ILR	International Law Reports
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
Indian JIL	Indian Journal of International Law
IntLawyer	International Lawyer
IntRel	International Relations
ItalYIL	Italian Yearbook of International Law
JIR	Jahrbuch für Internationales Recht
LNTS	League of Nations Treaty Series
LoN	League of Nations
Martens R	Martens Recueil de Traités
Martens R2	Martens Recueil de Traités, 2me éd.
Martens NR	Martens Nouveau Recueil de Traités
Martens NS	Martens Nouveau Supplément au Recueil de Traités
Martens NRG	Martens Nouveau Recueil Général de Traités
Martens NRG2	Martens Nouveau Recueil Général de Traités, 2me Série
Martens NRG3	Martens Nouveau Recueil Général de Traités, 3me Série
NATO	North Atlantic Treaty Organization
NedTIR	Nederlands Tijdschrift voor Internationaal Recht
NILR	Netherlands International Law Review
NordTIR	Nordisk Tidsskrift for International Ret
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
PCIJ	Permanent Court of International Justice
PolishYIL	Polish Yearbook of International Law
ProcASIL	Proceedings of the American Society of International Law
RdC	Académie de Droit International, Recueil des Cours
Res.	Resolution
RevBelge	Revue Belge de Droit International
RevEgypt	Revue Egyptienne de Droit International
RevHellén	Revue Hellénique de Droit International
RGDIP	Revue Générale de Droit International Public
RIAA	Reports of International Arbitral Awards
RivDirInt	Rivista di Diritto Internazionale
SAYIL	South African Yearbook of International Law
SchweizJIR	Schweizerisches Jahrbuch für internationales Recht
SCOR	Security Council Official Records
SEATO	South-East Asia Treaty Organization
Strupp-Schlochauer, Wörterbuch	Strupp-Schlochauer, Wörterbuch des Völkerrechts (2nd ed., 1960/62)

Supp.	Supplement
Texas ILJ	Texas International Law Journal
UN	United Nations
UN Doc.	United Nations Document
UN GA	United Nations General Assembly
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
UST	United States Treaties and Other International Agreements
WEU	Western European Union
WHO	World Health Organization
WMO	World Meteorological Organization
YILC	Yearbook of the International Law Commission
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

ADMINISTRATIVE TRIBUNALS *see* Administrative Tribunals, Boards and Commissions in International Organizations; International Labour Organisation Administrative Tribunal; United Nations Administrative Tribunal; World Bank Administrative Tribunal

ADMINISTRATIVE UNIONS, INTERNATIONAL *see* International Administrative Unions; Plurinational Administrative Institutions

ARTISTIC WORKS, INTERNATIONAL PROTECTION *see* Literary and Artistic Works, International Protection

BANK FOR INTERNATIONAL SETTLEMENTS

1. Background

The Bank for International Settlements (Banque des règlements internationaux; Bank für Internationalen Zahlungsausgleich) was created, as envisaged in the → Young Plan, by an international agreement embodying the decisions reached at the two conferences held in The Hague in August 1929 and January 1930. Its registered office is in Basle. By a convention concluded on January, 20, 1930 with Belgium, France, Germany, Great Britain, Italy and Japan, Switzerland undertook to grant a legal charter to the Bank in accordance with its statutes. The founders of the Bank were the central banks of the above-named countries, a Japanese commercial bank and an American group of private banks. It opened for business in Basle on May 17, 1930, having been approved by Swiss federal and cantonal laws.

2. Functions

The original function of the Bank was to act as the agent of the participating governments in implementing the Young Plan; in particular it was to receive the annuities payable by Germany and distribute them among the creditor States. Its activities in this field have been concluded in the intervening period. The Bank's main function now is to promote cooperation among the central banks; the aim of this cooperation is to maintain an effective international monetary system and overcome difficulties which could threaten the free exchange of goods and services. The governors of the most important central banks meet regularly at the Bank to exchange views and plan any joint operations which prove necessary. In particular, the Bank for International Settlements serves as a secretariat for the governors of the central banks of the member States of the European Communities and as an agent for the European Fund set up by the European Monetary Agreement (→ European Monetary Cooperation). It is also the meeting place of the finance ministers and central bank governors of the so-called "Group of Ten" (Belgium, Canada, France, Federal Republic of Germany, Great Britain, Italy, Japan, Netherlands, Sweden, United States; Switzerland also attends regularly). The general manager of the Bank is present at these meetings. The Bank administers gold and foreign exchange investments for central banks. It draws on its own resources to take part in any needed financing and credit operations (e.g. the support of Sterling in the 1960s). It collects and interprets data on the development of the international monetary and credit market, in particular the Euro-dollar market, and passes on its findings to the central banks. In part this information is also published in the Bank's annual reports.

3. Organization

The organization of the Bank is set out in its statutes (amended most recently in 1975). The Bank is a company limited by shares with an authorized capital of 1500 million gold francs, a gold franc being equivalent to 0.290 322 58 gramme fine gold. The share capital is divided into 600 000 registered shares with limited transferability. In contrast to general legal practice, these registered shares do not give the holders voting rights at the general meeting. The Bank's administrative structure is strongly influenced by Anglo-American law. Management policy is decided by one body, the Board of Directors. There is no provision for separate managing and supervisory boards. The Board consists of five *ex officio* directors and a number of appointed or elected directors. The *ex officio* directors are the governors of the central banks of the founding countries (Belgium, France, Germany, Great Britain and Italy; the United States never availed herself of her right to a seat and in

1953 Japan renounced her claim). Five of the other directors are appointed one each by the *ex officio* directors to represent the finance, industry or commerce of the countries concerned, while up to a maximum of nine are elected by the Board from among the central bank governors of the other member countries (the Netherlands, Sweden and Switzerland being regularly represented). The elected directors remain in office for three years, but may be re-elected.

The Board determines the management of the Bank. As a rule it decides by a simple majority (Art. 34). The Chairman of the Board is also the President of the Bank.

The Bank's business is conducted upon the instructions of the Board by a general manager and other senior officers appointed to assist him. The general manager is appointed on the proposal of the Chairman of the Board.

Voting rights at the general meeting are held only by the central bank governors of the founding countries and of those countries in which shares of the Bank were originally subscribed; they are in proportion to the amount of capital subscribed in each country.

4. Legal Situation

The Bank is an international organization and a → subject of international law. Its legal position in Switzerland is regulated by the "constituent charter" which forms part of the Convention concluded between Switzerland and the founding States (see section 1 *supra*). According to this charter the Bank enjoys tax freedom to a large degree and, together with its capital and the assets entrusted to it, is immune from all measures of → expropriation, confiscation or transfer restriction (→ International Organizations, Privileges and Immunities).

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BANKING INSTITUTIONS, INTERGOVERNMENTAL *see* Financial Institutions, Inter-Governmental; International Bank for Reconstruction and Development; Regional Development Banks

BERNE UNION *see* Literary and Artistic Works, International Protection; World Intellectual Property Organization

BRETTON WOODS CONFERENCE (1944)

1. History

The Conference of Bretton Woods was convened by United States President Franklin D. Roosevelt and took place in Bretton Woods (New Hampshire) from July 1 to 22, 1944. It was attended by 44 States which were later to become members of the → United Nations. The chairman of the Conference was Henry Morgenthau, Jr., the American Secretary of the Treasury. The British delegation was led by Lord John Maynard Keynes, and the French delegation by Pierre Mendès-France.

The Conference was one of the meetings held by the States who were in the process of creating the UN to discuss the world economic order in the post-war years.

2. Aims

The main aims of the Conference were to set up a new international monetary order and evolve an international credit system for reconstruction purposes (→ Monetary Law, International). These were considered essential for the world economy in the coming years of peace.

The experiences of the inter-war years had shown that the gold standard was no longer functioning satisfactorily and that, owing largely to government-dictated measures, such as devaluation, foreign exchange restrictions, foreign trade barriers and bilateral payments agreements, the free international exchange of goods was becoming increasingly disrupted (→ Economic Law, International). It was generally felt that governments should be persuaded to abandon such measures and that, based on international agreements, international institutions should be created which would supervise a multilateral international payments system independent of the gold standard, promote exchange stability and eliminate foreign exchange restrictions, at least for the transfer of goods and services (→ Capital Movements, International Regulation). Finally, it was hoped to establish a basis for short-term, as well as for medium- and long-term credits.

Two plans for the establishment of a multilateral international payments system were placed before the Conference: a British one prepared by Keynes and an American one prepared by Harry D. White. According to the British plan, an international credit pool was to be created using a new currency unit (bancor). For this purpose an International Clearing Union was to be set up (→ Clearing Agreements). The central bank of each member State would open an account with the Union and use this channel to adjust its international balance of payments. The Union would be in a position to grant short-term international credits. The White plan, on the other hand, envisaged an international stabilization fund formed by contributions from the member States. Every member would be able to claim credit from the fund in amounts of up to 100 per cent of its contribution. The fund's holdings in gold and currency would be free of foreign exchange controls.

Both plans combined the idea of multilateral accounting for the international transfer of payments with the possibility of short-term international credits. They committed the contracting parties to accept stable exchange rates, which could not be unilaterally adjusted without the consent of the prospective international institution. Both plans also provided for measures which could be brought into play if any of the member States had excessive debtor or creditor balances. The main difference between the two plans was that the White plan aimed at an international fund financed by membership contributions and provided for a firm, upper limit for the amount of credit that could be granted. There was also variance of opinion as to the relationship of the new institutions to the gold standard.

3. Results

The delegates to the Bretton Woods Conference were divided into three commissions. The first commission dealt with the establishment of the → International Monetary Fund (IMF), the second (under the chairmanship of Keynes) with that of the → International Bank for Reconstruction and Development (IBRD), while the third discussed "other means of international financial cooperation". This commission made a number of detailed recommendations concerning the fate of enemy assets (→ Enemy Property) and looted property (→ Pillage). It also prepared recommendations for economic and financial policy, suggesting the reduction of obstacles to international trade, the promotion of international commercial relations and the bringing about of the orderly marketing of staple commodities at prices fair to the producer and consumer alike (→ Commodities, International Regulation of Production and Trade; → World Trade, Principles).

The most important outcome of the conference were the agreements establishing the IMF, based essentially on the White plan, and the IBRD (also known as the World Bank).

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CIVIL SERVICE, INTERNATIONAL

1. Notion; Sources

The International Civil Service of the → United Nations system has its distant historical origins in the traditional pattern of conference secretariats, and in the secretariats of some administrative unions (→ International Administrative Unions), but has been influenced mostly by the experience of the permanent Secretariats of the → League of Nations and of the → International Labour Organisation (→ International Secretariat). The emergence of these organizations, and subsequently of the UN and of the Specialized Agencies (→ United Nations, Specialized Agencies), as bodies possessing international legal personality and extensive functions on the international plane, has had a decisive influence on the creation and the development of the modern international civil service. The inter-governmental organizations established in the aftermath of World War II operate within a different political and organizational and national context than their predecessors. Thus, the international civil service of the UN and the Specialized Agencies should be analyzed *ad novo* (cf. also → Civil Service, European).

Despite common usage, there is no such thing as an international civil service. There is a common system of salaries, allowances and benefits between the UN and most of the Specialized Agencies which has its origin in the relationship agreements concluded by the UN and the agencies concerned in pursuance of Arts. 57 and 63 of the → United Nations Charter. The → International Bank for Reconstruction and Development, the → International Monetary Fund, the → International Finance Corporation and the → International Development Association – organizations whose annual budgets are financed from funded capital subscriptions and which do not utilize the assessment system of financing – do not participate in the common system (→ Financial Institutions, Inter-Governmental).

In 1974 the → United Nations General Assembly adopted the Statute of the International Civil Service Commission (ICSC) in order to advance greater coordination and uniformity between the secretariats of the UN and the Specialized Agencies and to foster the development of a single unified international civil service (prior to that, an important coordinating role was performed by the International Civil Service Advisory Board). The Specialized Agencies have an independent legal status, each organization being a separate legal person with its own distinct international secretariat. A staff member has a contract with one particular organization only. He or she cannot be transferred or seconded to another Specialized Agency without his or her consent. Accordingly, the statute of the ICSC provides that it may perform its functions in respect of the UN and those common system Specialized Agencies that accept the statute.

In certain matters, the statute gives the ICSC the power to make decisions which are binding on the organizations. The statute has been accepted by the → Food and Agriculture Organization, ILO, → United Nations Educational, Scientific and Cultural Organization, → International Civil Aviation Organization, → World Health Organization, → Universal Postal Union, → International Telecommunication Union, → World Meteorological Organization, Inter-Governmental Maritime Consultative Organization (now → International Maritime Organization), → World Intellectual Property Organization and the → International Atomic Energy Agency, and informally by the Interim Commission of the International Trade Organization (→ General Agreement on Tariffs and Trade) and the → International Fund for Agricultural Development.

The common system and the acceptance of the ICSC's statute and its activities are further reinforced by the unifying influence of the administrative tribunals (→ United Nations Administrative Tribunal; → International Labour Organisation Administrative Tribunal; → World Bank Administrative Tribunal; → Administrative Tribunals, Boards and Commissions in International Organizations). Moreover, Arts. 100 and 101 of the UN Charter and the Staff Regulations and Rules of the UN inspired the corresponding provisions in the constitutional instruments and in the staff regulations and rules of Specialized Agencies. Thus, it is possible, in a descriptive rather than a strictly legal sense, to speak of and

to discuss the international civil service. It is composed of several categories of staff, such as the general service (clerical, etc.), manual workers and field service. The present article focuses on the most important group of officials, those who belong to the professional and higher categories, whose appointment is largely governed by the principle of geographical distribution discussed below.

The principal Charter provisions governing the UN civil service are Arts. 100 and 101. Art. 100 provides for the principle of the independence of the civil service and of the → United Nations Secretary-General, who may not seek or receive instructions from governments or other external authorities and who shall be responsible only to the UN. This article provides also for the duty of member States to respect the exclusively international character of the responsibilities of the Secretary-General and of the staff. Art. 101 provides that the staff shall be appointed by the Secretary-General under regulations established by the General Assembly, the paramount consideration being "the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

2. *Principles Governing Appointment and Service*

The legislative history of the Charter and the records of the Preparatory Commission of the UN, convened in London shortly after the San Francisco Conference, indicate that the international civil service was meant to be a continuing and career service, that the principle of merit in the selection of staff was to be indeed paramount, and that the "due regard" clause of Art. 101 reflected a secondary principle involving the desirability of having the widest possible national "representation" in the service. For many years now, the General Assembly has interpreted Art. 101(3) of the Charter as involving "desirable ranges" of posts in the professional and higher categories for every State, to be taken as a guideline for staff composition. The desirable ranges reflect three factors: membership of a State in the organization (the principle of sovereign equality), the contribution of the State to the assessed budget (with a weighted value given to budgetary contributions) and its population. In the course of time, the actual formulae have been modified in response to demands of the → developing States to give greater weight to the membership factor. Additional recruitment guidelines included preference to be given to young persons and to women.

In UN practice, there has been very limited use of competitive examinations (except mostly for language specialists). The "principle of geographical distribution" has become increasingly important, while the principle of merit faces the danger of being relegated to a secondary position. Some of the Specialized Agencies, where the technical nature of jobs often offers a more objective yardstick by which to measure merit, have tended to follow more the practice of competitive entry.

In all the organizations many candidates are recruited on the basis of referral by governments. The governmental influence on the appointment process has been growing despite the principles stated in Arts. 100 and 101 of the Charter and the parallel constitutional provisions of other organizations. Although → nationality and geographical distribution may legally be taken into account only with regard to recruitment, they also have been increasingly affecting promotion, placement and transfer of staff. In the UN and in some agencies, considerable politicization of the civil service has occurred. Despite the applicable legal principles, it has become extremely rare for the secretariats to appoint an individual to whose recruitment his or her government is strongly opposed. States which exert such pressure and heads of the organizations, who should themselves determine whether a person is fit to be appointed, may be reproached for violating Arts. 100 and 101 (and parallel provisions in the agencies). Intervention by States with regard to the careers of persons already appointed is particularly questionable.

3. *Types of Appointment; Termination of Appointment*

Although the Charter itself does not lay down specific rules regarding the terms of appointment of members of the staff, it was intended that the majority of the staff should serve on permanent

contracts and enjoy security of employment (tenure). This may be regarded as a necessary implication of Arts. 100 and 101 pertaining to the principles of independence and competence. In the Specialized Agencies, where many posts are highly technical, a greater interchange with outside practitioners may be required for reasons of efficiency (as is true, of course, also of many UN posts). Thus, the statute of the IAEA provides that the agency's permanent staff be kept to a minimum (Act. VII C). In the UN and in many other organizations, there has been a steady increase in the percentage of staff members serving on fixed-term contracts, often on temporary assignment (secondment) from national governments. Fixed-term officials in general, whether transferred by their States (seconded) or not, are more vulnerable to pressures from governments than tenured officials. In many cases, fixed-term contracts are not conducive to the acquisition of greater competence. It is clear that secondments on a large scale of national civil servants to international organizations may be a threat to the international character and to the independence of the Secretariat. Some organizations (e.g., in theory, IAEA) treat officials seconded by governments as if they had been directly appointed. The UN treats secondment as a tripartite arrangement involving the State, the official, and the organization.

Administrative tribunals have had the occasion to set forth the applicable legal principles when organizations have yielded to governmental pressure not to extend appointments of national civil servants. In the Levcik Case, the UN Administrative Tribunal (Judgment No. 192 of October 11, 1974) stated that in the absence of a secondment agreed to by all the parties, the Secretary-General could not, in view of Art. 100, "legally invoke a decision of a Government to justify his own action with regard to the employment of a staff member". The ILO Administrative Tribunal, discussing appointment and reappointment of governmental officials, ruled that the executive head of an organization (IAEA) "may not forgo taking a decision in the organization's interests for the sole purpose of satisfying a member State". (In re Rosescu, Judgment No. 431 of December 11, 1980.)

4. Legal Status

(a) Protection and immunities

A growing number of arrests and prosecutions of members of the international civil service have occurred, thus preventing the efficient performance of their functions and endangering the independence of the service. By Resolution 35/213 of December 17, 1980, the UN General Assembly reiterated the absolute necessity that staff members be enabled to discharge their tasks without interference on the part of member States or other external authorities. The Assembly also expressed concern about reports that privileges and immunities of officials of the UN and of Specialized Agencies had been encroached upon, and appealed to member States to respect the immunities and privileges of such officials (→ International Organizations, Privileges and Immunities).

Similarly, the 21st General Conference of UNESCO recently adopted a resolution (21 C/Resolution 25 of October 27, 1980), which expressed deep concern at the arrest and imprisonment of a senior official of the Secretariat on a visit to his home country and considered that such violations seriously undermine the independence of the international civil service.

Apart from various headquarters agreements (→ International Organizations, Headquarters) and other agreements governing immunities and privileges of international civil servants in particular countries, there exist basic texts governing the scope of immunities of international civil servants. They are: Arts. 104 and 105 of the UN Charter, the corresponding provisions in the constituent instruments of the Specialized Agencies, Arts. V (concerning UN officials) and VI (concerning experts on UN mission) of the Convention on the Privileges and Immunities of the United Nations (UNTS, Vol. 1, p. 15) and the corresponding provisions (Art. VI and annexes) in the Convention on the Privileges and Immunities of Specialized Agencies (UNTS, Vol. 33, p. 261).

Under Section 18 of the UN Convention, officials are immune from legal process in respect of words spoken or written and of all acts performed by them in their official capacity and from national service obligations. By Resolution 76(I)

of December 7, 1946, the General Assembly specified that the privileges and immunities referred to in Art. V were to be granted to all members of the staff with the exception of those who are recruited locally and assigned to hourly rates. Experts on mission for the UN are entitled to immunity from personal arrest or detention, under Section 22(a) of the UN Convention, even for non-official acts.

As regards immunities, no distinction is made between the professional category and the general service and other categories, nor are distinctions made on grounds of nationality. Except for those senior officials who under the UN Convention and the Specialized Agencies Convention enjoy diplomatic immunity, officials of the UN and of the Specialized Agencies do not enjoy immunity from arrest or prosecution for acts which are not related to their official duties. The immunity is therefore of a functional rather than a personal nature. When a staff member is arrested by a member State, such a State often argues that the arrest is not in any way related to the official duties of the international civil servant and that the UN has no legitimate interest in the matter.

It is, of course, also conceivable that a State might prosecute a staff member ostensibly for an entirely private act, while aiming in reality at punishing him or her for official acts. This gives rise to the question as to who determines whether the act impugned was an official act. The Secretary-General of the UN has consistently taken the position that he alone may decide what constitutes an official act and whether to invoke immunity or to waive it. In order to enable the Secretary-General to make these determinations, as well as to decide whether the organization should exercise functional protection, the UN must be given adequate opportunity to ascertain for itself the relevant facts. This may be achieved through gaining access to and conversing with the detained official, being apprised of the grounds for the arrest or detention, assisting the detained staff member in arranging legal counsel for his or her defence, and appearing in legal proceedings to defend any UN interest affected by the arrest or detention. The right of functional protection was of course clearly recognized by the → International Court of Justice (→ Reparation for Injuries Suffered in Service of UN (Advisory Opinion)).

On the whole, international organizations have been successful in protecting international civil servants *vis-à-vis* States of which they are not nationals but far less successful in protecting their employees from their national States in cases of detention in their home countries. Difficulties arise when a detaining State refuses to cooperate with the organization concerned. According to section 30 of the UN Convention (see also section 32 of the Specialized Agencies Convention), if a difference arises between the UN and a member State, a request shall be made to the ICJ for an advisory opinion on any legal question involved, in accordance with Art. 96 of the UN Charter and Art. 65 of the Statute of the ICJ. The opinion given would not be merely advisory, but "shall be accepted as decisive by the parties" (→ Advisory Opinions of International Courts). It should be observed that the Secretary-General is not among the principal organs of the UN authorized to request advisory opinions.

(*b*) *The employment relationship*

International organizations have taken the position that the employment relationship between the organizations and their staffs is not subject to national law but is governed by the internal law of the organizations (→ International Organizations, Internal Law and Rules). This position has been recognized by national courts, most recently in the case of Broadbent v. Organization of American States (628 F. 2d 27 (D.C. Cir. 1980)). The Court referred to the unique nature of the international civil service, whose members must, within the mandate granted by member States, be able to perform their duties free from the peculiarities of national politics. Citing the extensive staff regulations, grievance procedures and right to appeal to an administrative tribunal which are available to employees of the → Organization of American States, the Court stated that such international organizations should not be bound by the employment law of any particular member State. Any attempt by the courts of one nation to adjudicate the personnel claims of international civil servants would entangle those courts in the in-

ternal administration of those organizations, open the door to divided decisions of courts of different member States, undercut uniformity in the application of staff rules or regulations and undermine the ability of the organization to function effectively. The Broadbent decision is obviously also relevant to the organizations belonging to the UN system.

Members of the international civil service have legal rights and obligations *vis-à-vis* their organizations which are in part contractual and may not be varied unilaterally by the organization, and which are in part statutory and may be varied, but usually with prospective effect only. Staff regulations in the various organizations provide that such regulations may be amended as long as the amendments are without prejudice to the acquired rights of staff members. (See, for example, UN Staff regulation 12.1). The scope of acquired rights is difficult to determine and has been subject to judicial contruction by the Administrative Tribunals of the UN and of the ILO. The leading cases on this point are Kaplan v. The Secretary-General of the United Nations, UN Administrative Tribunal, Judgment No. 19 of August 23, 1953 and In re Lindsey, Administrative Tribunal of the ILO, Judgment No. 61 of September 4, 1962. See also the opinion of the Legal Counsel of the UN in United Nations Juridical Yearbook, 1977, at p. 201. A recent judgment of the UN Administrative Tribunal, Mortished v. The Secretary-General of the United Nations, Judgment No. 273 of May 15, 1981, was referred on July 13, 1981 to the ICJ for an advisory opinion in accordance with Art. 11 of the Statute of the UN Administrative Tribunal. It is to be hoped that the ICJ will contribute to a clarification of the concept of acquired rights. Given the immunity of organizations from the jurisdiction of national courts in employment disputes, conflicts regarding acquired rights and other employment disputes are litigated by the respective administrative tribunals (→ International Organizations, Legal Remedies against Acts of Organs).

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COMSAT (COMMUNICATIONS SATELLITE CORPORATION) *see* Intelsat

CUSTOMS COOPERATION COUNCIL

The Customs Cooperation Council (CCC), with headquarters in Brussels, is a specialized intergovernmental organization for the study of customs questions (→ Customs Law, International). From limited European origins the CCC has developed into an international organization of world-wide scope and influence.

A first step towards the foundation of the CCC was made by the Committee for European Economic Cooperation (→ European Integration). A study group was set up on September 12, 1947 in Brussels with the task of initiating preparations towards the establishment of one or more → customs unions in Europe. In 1949 the study group decided that the achievements attained already, especially in the fields of a common tariff nomenclature and a common definition of value for customs purposes, should be utilized. This decision was the origin of three Conventions signed in Brussels on December 15, 1950: the Convention on Nomenclature for the

Classification of Goods in Customs Tariffs (which entered into force on November 11, 1959; UNTS, Vol. 347, p. 127), the Convention on the Valuation of Goods for Customs Purposes (which entered into force on July 28, 1953; UNTS, Vol. 171, p. 305) and the Convention establishing a Customs Cooperation Council (which entered into force on November 26, 1952; UNTS, Vol. 157, p. 129).

The CCC is not merely the executive machinery required for the interpretation and application of the two specialized Conventions. It is also an organization with a more general responsibility "to secure the highest degree of harmony and uniformity in [the members'] customs systems and especially to study the problems inherent in the development and improvement of customs technique and customs legislation in connection therewith" (Council Convention, Preamble; → Unification and Harmonization of Laws).

The delegates to the Council are representatives of the contracting parties to the Council Convention (Art. II); they are mainly the heads of national customs administrations. Normally they meet in Brussels once a year (Art. VII). The Council is to be assisted by a Permanent Technical Committee and a General Secretariat (Art. V). The Secretariat's task is to study various technical customs questions and assist the Council, its committees and, when requested, national administrations. Pursuant to Art. XII(b) of the Convention, the financing of the Council's budget is allocated between individual members in accordance with a scale to be determined by the Council.

For any State which is not a signatory to the Convention the procedure for accession is governed by Art. XVIII(b). Instruments of accession must be deposited with the Belgian Ministry of Foreign Affairs, (→ Depositary), which has to notify all signatory and acceding governments and the CCC Secretary-General of each such deposit. As of July 1, 1981, the CCC had 93 contracting parties.

The Council works through its four technical committees. The Permanent Technical Committee, composed of all members of the Council, deals with all technical work except that covered by the Nomenclature and Valuation Committees. The work of the Nomenclature Committee is the basis for customs administration. It produces the only internationally known system for this purpose, called the CCC Nomenclature (CCCN), formerly known as the Brussels Tariff Nomenclature (BTN).

The work of the Valuation Committee also serves as a basis for customs administration. After 1953 the principle of *ad valorem* duty collection called for a system of customs valuation. For many years the CCC provided the only internationally accepted definition of value through its Convention on the Valuation of Goods for Customs Purposes. A new system of valuation has since emerged from the Tokyo Round of multilateral trade negotiations within the framework of the → General Agreement on Tariffs and Trade (→ World Trade, Principles; → International Economic Order). This system entered into force on January 1, 1981. Administration of the technical aspects of the new system are entrusted to a technical committee under the auspices of the CCC (Art. 18 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Customs Valuation Code) of April 12, 1979, and Annex II).

The Harmonized System Committee was charged with developing a harmonized commodity description and coding system based on the CCCN (→ Commodities, International Regulation of Production and Trade). With regard to the harmonization of customs régimes, the CCC has established 11 conventions and 30 recommendations on customs procedures and anti-smuggling measures. One of the most important conventions dealing with the simplification and harmonization of all customs procedures, the Kyoto Convention of May 18, 1973, systematically lays down the basic principles of the different customs procedures. In 1979 the Council established a new body, the Policy Commission, which is a small representative group of Council members. Its task is to consider and advise on important policy matters and to act as a dynamic steering group for the Council.

For the future work of the CCC concerning the development of the harmonized commodity description and coding system, there are plans for another technical committee to be formed and to begin work from January 1, 1985.

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DISPLACED PERSONS *see* Refugees

DUMBARTON OAKS CONFERENCE (1944)

At the Conference held at Dumbarton Oaks (Washington, D.C.) from August 21 to October 7, 1944, the United States, the United Kingdom, the Soviet Union and China discussed proposals for an international organization to be established under the name of "The United Nations".

The meeting was one of a series attended by leading representatives of the major Allied Powers during World War II; whereas the other meetings were devoted exclusively or mainly to war aims, the Dumbarton Oaks Conference was concerned only with preparations for the establishment of an institution which was to replace the → League of Nations and remedy its failings.

The idea of creating a world-wide organization after World War II to promote international peace and international security had already found expression in the → Atlantic Charter (1941) and the "United Nations" Declaration of January 1, 1942. The Chinese Government endorsed the proposals formulated during the course of the second Moscow Conference attended from October 19 to 30, 1943 by the Foreign Ministers of the United States, the United Kingdom and the Soviet Union (Cordell Hull, Anthony Eden and Vyacheslav Molotov). At the 1943 → Tehran Conference, Franklin D. Roosevelt, Winston Churchill and Joseph Stalin expanded these proposals.

The initiative for the meeting at Dumbarton Oaks was taken by the United States and stemmed from the conviction of President Roosevelt, supported by his Secretary of State Hull, that an agreement among the major Allied Powers on the establishment of a world organization would be easier to achieve during the war than after it. A "Possible Plan for a General International Organization", drafted by the United States State Department in the light of experience gained with the League of Nations and presented to President Roosevelt on December 23, 1943, was used as the basis for preliminary discussions among the governments concerned. Later amendments were influenced by a document issued in April 1944 and entitled "Postulates, Principles and Proposals for the International Law of the Future", which on the instigation of Professor Manley O. Hudson had been prepared over the previous two years by some 200 lawyers and legal theorists drawing on earlier plans for a world peace organization (→ Peace, Proposals for the Preservation of).

The negotiations at Dumbarton Oaks were divided into two phases. From August 21 to September 28, 1944, talks took place between representatives of the United States, the United Kingdom and the Soviet Union. From September 29 to October 7, 1944, delegates of the United States and the United Kingdom discussed the same topics with China as the major Allied Power in the Pacific region. The Soviet Union did not wish to negotiate directly with China as she had not yet entered the war with Japan. Contrary to the Soviet proposal for an organization for the promotion of peace on the one hand, and a separate institution for economic and social cooperation on the other, it was decided to adopt the Anglo-American proposal for the establishment of a single organization with comprehensive powers. Following the recommendations of the Bruce Committee, which had been set up by the League of Nations in 1939, these powers were to extend into economic and social fields, whereby new forms of international organization were envisaged, characterized by the establishment of subordinate organizations within the framework of the main organization. Some of these were discussed at Dumbarton Oaks, while others were conceived at a later date (→ United Nations, Specialized Agencies). The results of the negotiations are to be found in a document entitled "Proposals for the Establishment of a General International Organization" (the so-called "Dumbarton Oaks Proposals"), which was published on October 9, 1944, embodying the jointly prepared recommendations submitted by the delegations to their respective governments. This

document was forwarded to the signatory States of the "United Nations" Declaration of January 1, 1942 as the basis for the formulation of a charter for the new world organization, which was to be drafted at the San Francisco Conference (April 25 to June 26, 1945; → United Nations).

The Dumbarton Oaks proposals were not intended as a draft charter text, but in twelve chapters they already contain the major portion of the provisions on purposes and principles, membership, and the structure, functions and procedure of the organs of the new world organization. These provisions were repeated substantially intact in both sequence and formulation (in particular, those on purposes and principles) in the → United Nations Charter. At the San Francisco Conference they were merely supplemented by provisions on matters which had been left open for further discussion. These included questions of a political nature such as the prohibition of intervention in matters within a State's → domestic jurisdication (→ Non-Intervention, Principle of), eligibility for membership (mainly because Ambassador Gromyko's aim was to have all 16 Soviet republics accepted as founding members), the voting procedure in the General Assembly and the Security Council (in particular the → veto question), details concerning the Trusteeship Council and a → United Nations trusteeship system to replace the → mandate system of the League of Nations, the establishment of the → International Court of Justice to replace the → Permanent Court of International Justice, and the possibility of Charter revision. The "miscellaneous provisions" and the final clauses (Chapters XVI and XIX of the Charter) are also absent from the proposals.

The problems which remained unresolved at the Dumbarton Oaks Conference were discussed in talks between Churchill, Eden and Stalin in Moscow from October 9 to 20, 1944, in exchanges of → notes between the United States, the United Kingdom and the Soviet Union, and at the → Yalta Conference (1945). Prior to the San Francisco Conference, the American States discussed the plans for a future world organization at the Inter-American Conference on Problems of War and Peace held in Mexico City from February 21 to March 8, 1945. The basis for these discussions was a report of the Inter-American Council of Jurists on the Dumbarton Oaks proposals dated December 8, 1944.

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ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS *see* United Nations Economic and Social Council

ECONOMIC COMMISSIONS OF THE UNITED NATIONS *see* Regional Commissions of the United Nations

FINANCIAL INSTITUTIONS, INTER-GOVERNMENTAL

1. Historical Background and Development

Inter-governmental financial institutions have a relatively brief history. They were created in response to the devastation of world-wide conflict and collapse in two world wars, in order to establish a world-wide system of economic cooperation as the basis for reconstruction, development and prosperity. The → Bank for International Settlements was founded in 1930 in connection with arrangements for the settlement of financial questions arising out of World War I (→ Dawes Plan; → Young Plan). The Articles of Agreement of the two principal institutional pillars of the existing international economic system, the → International Monetary Fund and the → International Bank for Reconstruction and Development (World Bank), were adopted at the United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire on July 22, 1944 as part of post-war planning for a better future (→ Bretton Woods Conference). They were followed by the establishment of → regional development banks and other institutions for international economic cooperation, resulting in an extensive and complex institutional framework that has facilitated the growth of the international economy and provided machinery for dealing with common economic and financial problems in areas in which uncoordinated national policies have proven themselves inadequate (→ International Economic Order).

In recent years, building on important accomplishments often taken for granted, such as post-war reconstruction (→ European Recovery Programme) and the establishment of a multilateral system of payments and transfers for current international transactions (market convertibility) among the industrial countries, the activities of the development banks have focused on the economic growth of → developing States, to which the International Monetary Fund has made its unique contribution by supporting policies of monetary stability as the essential basis for sustainable economic growth (→ International Law of Development). A necessary aspect of this evolution has been the growth of rules, procedures and practices affecting international economic activities, which reflect the existence and activities of these institutions.

2. General Characteristics

Inter-governmental financial institutions combine specialized financial functions, expertise and resources with a decision-making procedure based on → weighted voting that seeks to reflect a broad balance among the interests of the membership. They are administered by Executive Boards of Directors, to which Directors are appointed or elected by members. These Boards are responsible for conducting the business of their institutions, act on the basis of extensive delegated powers, and are assisted by an international staff. The effective implementation of the purposes of these institutions is predicated on their ability to carry out financial operations in an environment of economic → interdependence. In order to mobilize public and private resources effectively, they must achieve and maintain confidence in the financial prudence of their administration.

The legal context for the operation of these institutions is based on the national → sovereignty of the participating States and on the agreed scope and methods of cooperation among them. The purpose of cooperation is to deal with complex interactions among their economies, which have both legal and economic aspects. The activities of these institutions have fostered the emergence and development of international economic law, with its unique blending of the concepts and principles of law and economics, of sovereignty

and interdependence, and of public and → private international law (→ Economic Law, International; → Capital Movements, International Regulation; → Monetary Law, International).

With the phenomenal growth of the international economy since the end of World War II and its current problems of adjustment, and the commitment of the international community to the promotion of economic development, the institutions have gone through different phases. At first they had to be made to work as operational institutions. Then, they have had to deal with rapid changes in the economic circumstances of their membership. In the process of deploying the financial leverage of their resources in support of internationally agreed economic policies, they have assumed an increasing range of responsibilities. This process is evidenced on the legal plane by amendments to the institutions' Articles of Agreement (described in the articles dealing with those institutions), but the growing volume and complexity of their substantive activities may be best appraised by an examination of their Annual Reports.

International financial institutions have a unique combination of law and policy-making and operational features that have made them effective and adaptable. In this they have become the models for international agreements on specialized activities in various fields.

3. *The Principal Institutions*

(*a*) *International Monetary Fund*

The International Monetary Fund is a universal inter-governmental organization with broad purposes and responsibility for the oversight of the international monetary system. The essential purpose of this system is to provide a framework that facilitates the exchange of goods, services and capital among countries, and that sustains sound economic growth. A principal objective of the Fund is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability in all member countries.

The financial role of the Fund is based on its purpose, set out in Art. I(V) of its Articles of Agreement:

> "To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity."

In pursuing its financial role, the Fund uses its own resources, and obtains further resources from countries in a strong balance-of-payments and reserve position, to make them available to countries in balance-of-payments need. In pursuing its monetary role, the Fund makes available these resources in support of comprehensive economic policies of balance-of-payments adjustment. The support of adjustment in fields such as budgetary, credit, and foreign exchange policies is based on principles and techniques designed to achieve effectiveness while paying due regard to the domestic social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance-of-payments problems. In relation to developing countries, the Fund seeks to make development possible and efficient by supporting a financially sound basic framework for the economic policies of which development policies are an integral part, and which can be the basis for attracting finance for investment from both official and private sources (→ Foreign Investments).

The Fund also allocates special drawing rights (SDRs) to its members (all of which are now participants in the Fund's Special Drawing Rights Department), and pursues the objectives of promoting better international surveillance of international liquidity and making the SDR the principal reserve asset in the international monetary system.

(*b*) *World Bank*

The World Bank is similarly a universal intergovernmental organization, and with an actual membership similar to that of the Fund it is the leading source of development lending (→ Loans, International). The Fund and the World Bank are closely linked, both institutionally and in practice, and their objectives are complementary. While the Fund's activities deal with the operation of the international monetary system and the balance-of-payments policies of members, the Bank

promotes investments for the development of productive resources. The same is true for the regional development banks. Whereas the resources of the Fund have been obtained so far only from official sources, mostly on the basis of subscriptions by members but also to some extent by official borrowing, the World Bank has obtained most of its resources from non-official sources by borrowing in the market against the backing of official credit by its members in the form of the unpaid portion of capital subscription. It has been said, although with a measure of oversimplification, that the World Bank must borrow in order to lend. In order to mitigate the financial terms resulting from this mostly market-based funding, the → International Development Association was established in 1960 as a member of the World Bank Group with subscribed official resources, so that development assistance could be made available to the poorest members on concessional terms. A similar development of resource-blending through special funds is observable in the experience of the other development banks.

4. Significance of Institutions

Inter-governmental financial institutions channel, mobilize, catalyze and administer financial resources to promote internationally agreed economic objectives. They are active in supporting appropriate national macro-economic and investment policies, and in the case of the development banks, actual investments. By doing so, they provide the machinery for international cooperation where the need for it is generally accepted and give impetus to economic development. They also provide a forum for continuing international discussions on how to deal with new developments, changing circumstances, and the ways and means for fulfilling their purposes.

Like their sovereign members, the institutions themselves are both the subjects and the shapers of public international law (→ Subjects of International Law), and have affected in various ways the development of private international law. Their substantive activities and technical innovations make them a continuing and important source of development in the growing field of international economic law.

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FINANCING AND BUDGETING OF INTERNATIONAL ORGANIZATIONS *see* International Organizations, Financing and Budgeting

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

A. Establishment and Constitutional Mandate: 1. Establishment. 2. Constitutional Mandate. – B. Membership: 1. Original and Additional Members. 2. Associate Members. – C. Structure: 1. Conference. 2. Council and its Standing Committees. 3. Statutory Bodies. 4. Director-General and Secretariat. – D. Finances. – E. Decision-Making Process: 1. Elections. 2. Other Decisions. – F. Activities: 1. General. 2. Production Increase and Resource Management. 3. Social Promotion. 4. Food and Nutrition. 5. Commodity and Trade Problems. – G. Special Legal Aspects: 1. Treaty-Making. 2. Standard Setting. 3. Legislative and Institution-Building Assistance.

A. Establishment and Constitutional Mandate

1. Establishment

A United Nations Conference on Food and Agriculture was convened by President Franklin D. Roosevelt at Hot Springs, Virginia, in May–June 1943. It adopted a final act, signed by 44 governments, as well as a formal declaration, and established an Interim Commission, whose principal task was to formulate "a specific plan for a permanent organization" and thus also to draw up a Constitution. The first session of the FAO Conference was held at Quebec from October 16 to November 1, 1945; on the opening day, 34 States became members of FAO by signing the Constitution, which thus came into force eight days before the → United Nations Charter. The premises made available to the Interim Commission at Washington became the provisional headquarters of FAO until 1951, when it was transferred to Rome, upon conclusion of a Headquarters Agreement with the Italian Government (→ International Organizations, Headquarters). The assets of the International Institute of Agriculture (IIA) (1905–1946), including its valuable documentation, devolved upon FAO.

2. Constitutional Mandate

The aims of FAO are set forth concisely in the Preamble of the Constitution:

"raising levels of nutrition and standards of living. . .;
securing improvements in the efficiency of the production and distribution of all food and agricultural products;
bettering the condition of rural populations; and thus contributing toward an expanding world economy and ensuring humanity's freedom from hunger".

The methods designed to achieve those aims are defined in Art. I of the Constitution ("Functions of the Organization"), which also defines the term "agriculture" as including fisheries (→ Fisheries, International Regulation), marine products, forestry and primary forestry products. Apart from continuing the function (previously exercised by the IIA) of collecting, analyzing and disseminating information, FAO was to

"promote . . . national and international action with respect to:

(a) scientific, technological, social and economic research relating to nutrition, food and agriculture;

(b) the improvement of education and administration relating to nutrition, food and agriculture, and the spread of public knowledge of nutritional and agricultural science and practice;

(c) the conservation of natural resources and the adoption of improved methods of agricultural production;

(d) the improvement of the processing, marketing and distribution of food and agricultural products;

(e) the adoption of policies for the provision of adequate agricultural credit, national and international;

(f) the adoption of international policies with respect to agricultural commodity arrangements."

Pursuant to Art. I(3) (a) of the Constitution, it is also a function of FAO "to furnish such

technical assistance as governments may request". No such provision exists in the UN Charter, nor in the constitutions of other organizations in the UN system that were adopted in the immediate post-war period.

B. Membership

1. Original and Additional Members

Annex I to the FAO Constitution enumerates 45 States that are eligible for original membership, which is acquired by deposit of an instrument of acceptance in accordance with Art. XXI of the Constitution; with the exception of the Soviet Union, all these States became members of FAO. Other States may, upon application, be admitted by a two-thirds majority of the Conference (Constitution, Art. II(2)). Membership increased from 39 in 1945 to 152 in 1981.

2. Associate Members

Any → non-self-governing territories may, upon application by the Member Nation responsible for their international relations, be admitted by the Conference as Associate Members of FAO (Constitution, Art. II(3)). All 18 territories so admitted (in the 1950s and early 1960s) have meanwhile acquired independence and full membership (→ Decolonization; → New States and International Law).

C. Structure

FAO's structure, as derived from its Constitution, is similar to that of most organizations in the UN system (→ United Nations, Specialized Agencies).

1. Conference

The supreme organ is the Conference, "in which each Member Nation . . . shall be represented" (Constitution, Art. III(1)), and which holds regular biennial sessions (annual until 1949) and special sessions if necessary. Apart from providing policy guidance, the Conference exercises exclusive responsibility for dealing with, or taking final decisions on, certain key issues such as: approval of the programme of work and budget and the scale of contributions; admission of new members; election of the independent chairman and members of the Council and of the Director-General; adoption of amendments to the Constitution, the General Rules of the Organization (GRO) and the Financial Regulations; and approval of conventions drawn up under Art. XIV, and agreements negotiated under Art. XII or XV, of the Constitution.

2. Council and its Standing Committees

The Council was given its present inter-governmental structure in 1947, and its membership gradually increased from 18 to 49. Art. V(3) of the Constitution provides that the Council "shall have such powers as the Conference may delegate to it", but some functions are specified in the Constitution itself (e.g. in Arts. VI, XI, XIV), and most of them in the General Rules (mainly GRO Rule XXIV). The Council normally holds four sessions in each biennium. Its deliberations are based, in a large measure, on the reports of the standing inter-governmental committees enumerated in Art. V(6) of the Constitution. Three small committees of seven to eleven members meet in private three to four times in a biennium: the Programme and Finance Committees, and the Committee on Constitutional and Legal Matters. Five "open membership" committees (Commodity Problems; Fisheries; Forestry; Agriculture; World Food Security) hold public sessions only once or twice in a biennium. The functions and operating procedures of these committees are laid down in the General Rules (GRO Rules XXVI to XXXIV).

3. Statutory Bodies

A characteristic feature of FAO may be found in the large number of (predominantly governmental, mostly regional) bodies established either by Conference or Council resolutions under Art. VI, or by conventions or agreements drawn up under Art. XIV of the Constitution. These "statutory bodies" have made important contributions to regional cooperation in many fields, and have also influenced global programming. The same is true of Regional Conferences held predominantly at the ministerial level in years between two FAO Conference sessions.

4. Director-General and Secretariat

The Director-General, acting under "the general supervision of the Conference and Council, . . . shall have full power and authority to direct the work of the Organization" (Con-

stitution, Art. VII(4)). His functions, as laid down in, or derived from, the Constitution and the General Rules, are similar to those of executive heads of other organizations in the UN system; he is endowed with important discretionary powers with respect to the formulation of programmes and priorities, and the choice of implementation methods. The present incumbent, Edouard Saouma (Lebanon), was elected for a 6-year term in 1975 and re-elected for a similar term in 1981.

The Secretariat consists of Headquarters; Regional Offices (Africa; Asia and Pacific; Europe; Latin America; Near East) and Liaison Offices (North America; UN, New York; UN Specialized Agencies, Geneva); Joint Divisions established with certain → United Nations Economic Commissions and with the → International Atomic Energy Agency; FAO representatives at country level, and field staff. FAO has for many years been the largest Specialized Agency, but any staff increases since the mid-1970s have been limited essentially to outposted or field staff. Of the total staff of 8500 employed in 1981, 4000 (or 47 per cent) were at Headquarters; however, of the professional posts, only 31.5 per cent were at Headquarters, with 68.5 per cent in field projects, FAO Regional or Country Offices, or Joint Divisions.

D. Finances

The resources and financial management of FAO do not differ in any significant way from those of other organizations in the UN common system (→ International Organizations, Financing and Budgeting). In view of the growth of FAO's tasks, membership, and staff, and taking into account inflationary pressures, the Regular Budget has grown from $8.36 million in 1946–1947 to $366.64 million in 1982–1983. What is more remarkable is the progressive increase of extra-budgetary resources, which amounted to some $580 million in 1980–1981, despite a decline in the proportion of resources derived from the → United Nations Development Programme (from 86 per cent in 1970 to 61 per cent in 1980).

E. Decision-Making Process

1. Elections

Elections in most FAO organs usually take place by → consensus (acclamation), on the basis of Rule XII(9) (a) of the General Rules (and analogous provisions in Rules of Procedure of other organs) providing that the Chairman of Conference or Council may propose appointment "by clear general consent" where the number of candidacies does not exceed the number of vacancies (→ Voting Rules in International Conferences and Organizations). For certain elections (e.g. Chairman and Members of the Council; Director-General), secret ballots are mandatory in all cases.

2. Other Decisions

For decisions on substantive questions, voting procedures exist for all governing and most statutory bodies, but are rarely used. Most topics on which decisions have to be taken by Conference or Council are carefully examined by Standing Committees of the Council, which frequently adopt recommendations with a view to approval by consensus. Informal consultations or contact groups are occassionally used to prepare the ground for a consensus. The facts that (a) the number of resolutions is very limited, and (b) the narrative reports adopted at each session of a governing body may also reflect minority views, further contribute to obviating the need for recourse to formal voting. However, for decisions requiring a qualified majority (e.g. amendments to the Constitution, the General Rules or the Financial Regulations; approval of the budget level), a roll call vote is mandatory.

F. Activities

1. General

FAO's functions derive from the Constitution and cover a wide area. The collection, analysis and dissemination of information remain an important task which serves to improve continuously FAO's statistical and analytical framework for short- and long-term outlook and action. However, an increasing emphasis is placed on FAO's operational and promotional role, especially by way of technical assistance and generation of investment for the improvement of agriculture, fisheries, forestry, nutrition, natural resources management, and living standards of the rural population in → developing States.

2. Production Increase and Resource Management

Highest priority is given by FAO to an

increase in food production, at least sufficient to keep pace with population growth, on a sustained basis, i.e. accompanied by rational management of productive resources and ecological balance. The measures taken and envisaged require important capital inputs; improvement of infrastructure; research and training. They are intended to promote more effective methods in crop protection (→ Plant Protection, International) and conservation; animal health; product processing; marketing and credit. FAO's efforts are therefore oriented to directing increased investments and human resources toward agricultural development (see also → International Commission for Food Industries; → International Fund for Agricultural Development; → World Food Council).

3. Social Promotion

In FAO's activities, the social aspects are increasingly relevant, especially as small holders, share-croppers and landless farmers often do not benefit from major investments. It is in that sense that the World Conference on Agrarian Reform and Rural Development (WCARRD), convened by FAO in July 1979, probably made a major impact by promoting agrarian reform, access of small farmers to productive assets, credits, cooperatives and markets. FAO programmes and resources have subsequently been reoriented to promote the implementation of the WCARRD programme of action.

4. Food and Nutrition

Nutrition programmes include the Joint FAO/WHO Food Standards Programme, established concurrently with the Codex Alimentarius Commission in 1961, as well as assistance to governments in developing integrated national food control systems (→ World Health Organization).

5. Commodity and Trade Problems; World Food Security

Analysis and evaluation of commodity problems in terms of trade have always played a major part in FAO's activities. The creation of various commodity councils and of the → United Nations Conference on Trade and Development have somewhat modified its orientation but have not reduced its importance (→ Commodities, International Regulation of Production and Trade). The monitoring and limited regulating functions of the Committee on Commodity Problems and its inter-governmental Commodity Groups, and the consultative mechanism of the Sub-Committee of Surplus Disposal constitute the main elements in this area. The achievement of food security is one of FAO's major goals. In this regard, the FAO Plan of Action on World Food Security recommended the adoption of food grain stock policies and indicated the criteria for management and release of national stocks. This was supplemented by a Food Security Assistance Scheme in favour of low-income food-deficit countries and by the Global Information and Early Warning System.

G. Special Legal Aspects

1. Treaty-Making

A number of treaties has been drawn up by FAO both in accordance with Art. XIV of the Constitution, or outside the constitutional framework, for submission to a conference of plenipotentiaries convened by FAO. Depositary functions are exercised by the Director-General in respect of all treaties adopted under Art. XIV, and of other treaties if provided for therein. A list of treaties with indications as to their status is submitted as a "Statutory Report" to each Conference session.

2. Standard Setting

(a) International agreements. A limited number of standards, or provisions allowing the adoption of standards by statutory bodies, have been included in certain treaties adopted under Art. XIV, e.g. International Plant Protection Convention (UNTS, Vol. 150, p. 67), Plant Protection Agreement for South-East Asia and the Pacific Region (UNTS, Vol. 247, p. 400), Agreement establishing the General Fisheries Council for the Mediterranean (UNTS, Vol. 490, p. 444), the latter containing clauses for the adoption of potentially binding fishery management recommendations (with a procedure for "opting out" within specific time limits). Most standard-setting activities of the FAO take place by instruments other than treaties (→ International Legislation).

A few examples are given herein below.

(b) Codex Alimentarius. The Codex Alimentarius Commission was established in 1961 by concurrent resolutions of the FAO Conference (Conf. Res. 12/61) and the World Health Assembly (WHA 16/42). About 180 standards concerning individual commodities, as well as certain general standards and codes of practice, had been adopted by 1981 within the Codex Alimentarius Commission framework. The elaboration takes place through a number of Codex Committees and government consultations, according to a fairly complex procedure, set forth in the Commission's Procedural Manual. Once a standard is adopted by the Commission, governments are invited to accept it, either as adopted or with specified deviations. Any State accepting a standard must ensure that any food imported or produced for domestic consumption conforms with the standard (Dobbert, Decisions of International Organizations, pp. 238–256).

(c) Commodity arrangements. Notwithstanding Art. I(2) (f) of the FAO Constitution (quoted above), the negotiation and conclusion of formal commodity agreements has customarily been left to the UN, then to UNCTAD and to commodity councils established by such agreements. However, informal and more flexible arrangements, covering essentially the same subjects as commodity agreements, have been made under FAO auspices.

(d) FAO Principles of Surplus Disposal. These Principles were adopted by FAO in 1953 to prevent harmful effects of large-scale surplus supplies on normal trade patterns and on domestic price structures (→ World Trade, Principles). The Consultative Sub-Committee on Surplus Disposal (CSD) was established to act as a consultative body for transactions on concessional terms, including food aid projects (→ World Food Programme (UN/FAO)), and the range of such transactions was further broadened in 1969/1970. The Principles were made subject to acceptance by individual States and have in fact gained wide acceptance (Conf. Res. 14/53; Dobbert, Decisions of International Organizations, pp. 259–275).

(e) International Undertaking on World Food Security. The world food crisis of the early 1970s focused attention on uncertainty of food supplies in many developing countries. To promote collective action, FAO drew up an international undertaking, approved in principle by the FAO Conference in 1973 (Conf. Res. 3/73), subsequently supported by the World Food Conference (Res. XVII), and adopted by the FAO Council at its 64th Session in 1974 (CL Res. 64/1). Acceptance of the Undertaking implies, *inter alia*, the obligation to implement national stock policies designed to ensure a minimum safe level of basic food stocks in times of crop failures or natural disasters. By the end of 1981, the Undertaking had been accepted by 82 Member Nations of FAO and by the → European Economic Community (for more details and follow-up action, see ECOSOC Doc. E/1981/22, paras. 87–105).

3. Legislative and Institution-Building Assistance

Collection, analysis and dissemination of legal information, and performance of legal research are largely geared to assistance in food, animal, plant, agrarian, forest, and wildlife legislation (→ Wildlife Protection), as well as natural resources law in general. This implies a particularly strong emphasis on institutional and international law in such areas as water law (especially river law and watershed management; → River Pollution Control; → Water, International Regulation of the Use of), fishery law (under the impulse of the new law of the sea; → Conferences on the Law of the Sea), and environmental law (e.g. environmental impact assessment, protection of regional seas; → Environment, International Protection).

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GENERAL AGREEMENT ON TARIFFS AND TRADE (1947)

I. Membership of GATT. II. Origin and Organizational Development: A. Origin and Provisional Application. B. Institutional Framework. C. Amendments to GATT. D. Supplementary Agreements. III. International Trade Rules between Members: A. Most-Favoured-Nation Treatment. B. Reduction of Tariffs. C. Non-Tariff Trade Barriers: 1. National Treatment. 2. Quantitative Restrictions. 3. Anti-Dumping Duties and Subsidies: (a) Dumping. (b) Subsidies. (c) Product-related taxes. 4. Other Barriers. D. State Trading. IV. Dispute Settlement. V. Achievements of GATT.

The General Agreement on Tariffs and Trade (GATT), originally a multilateral treaty containing general principles and rules for international trade (UNTS, Vol. 55, p. 187; → Treaties, Multilateral), has gradually by subsequent decisions of the contracting parties been transformed into an international organization (→ International Organizations, General Aspects), although GATT does not refer to itself as such.

I. MEMBERSHIP OF GATT

Membership in GATT has steadily increased to 87 States (as of January 1, 1982), which account for more than 80 per cent of world trade; in addition, 30 newly-independent States whose trade had already been brought within GATT before independence apply GATT *de facto*. All the main market-economy oriented industrialized States are members; some State-trading countries have also become members (Czechoslovakia in 1948, Yugoslavia in 1966, Poland in 1967, Romania in 1971, Hungary in 1973). The group of → developing States is represented by 52 *de jure* and 30 *de facto* members. The → European Economic Community on which the competence for concluding trade agreements with third States has been conferred by its member States (→ European Communities: External Relations), is not formally a member of GATT, but takes part in the trade negotiations within GATT and signs and accepts the respective agreements together with its member States.

II. ORIGIN AND ORGANIZATIONAL DEVELOPMENT

A. Origin and Provisional Application

During the Second Session of the Preparatory Committee for the UN Conference on Trade and Employment (held in Geneva from April 10 to October 30, 1947) which had drafted a Charter for an International Trade Organization (→ Havana Charter), the participating States had simultaneously conducted multilateral trade negotiations for the reciprocal reduction of customs tariffs (→ Customs Law, International). At the end of the Session it was decided to put that part of the draft Charter which dealt with multilateral trade relations separately and provisionally into operation to serve as treaty basis for the agreed tariff concessions. The articles of that part of the draft Charter together with the so-called "Schedules" of the tariff concessions made by each State were put into the form of a separate treaty (named the "General Agreement on Tariffs and Trade") and attached to the Final Act of the Session which was signed by the participating States on October 30, 1947. On the same day, the 23 signatories of the Final Act drew up a Protocol of Provisional Application of GATT (UNTS, Vol.

55, p. 308) which was subsequently accepted by the signatories of the Final Act and went into effect for those States on January 1, 1948 or after acceptance if that came later.

Thereafter, participation in GATT was effected in each case by way of accession to the Protocol of Provisional Application which required the prior consent by two-thirds of the parties to the Protocol. Newly-independent States which were formerly dependent territories of GATT members could accede by way of succession if sponsored by the respective GATT member (Art. XXVI GATT; cf. → State Succession).

The GATT itself was never ratified (or "accepted" in the terminology of GATT) by the parties to the Protocol of Provisional Application, except by Haiti. Today, the binding force of GATT still rests on this Protocol (an outstanding anomaly in the practice of → treaties after so many years of provisional application), but the effective application of GATT has not suffered from this formal imperfection. The reason GATT members thought it desirable to leave GATT under provisional application was the stipulation of the Protocol which allowed them to maintain their existing national legislation even if its protectionist features (e.g. import quotas, discriminatory taxation, balance-of-payments restrictions, and agricultural marketing systems) were at variance with the provisions of the GATT.

B. Institutional Framework

Because it was thought that GATT would be superseded by the international trade organization to be established under the Havana Charter, its articles did not provide for any institutional framework. In those articles of GATT where collective action of the contracting parties is needed for their application (e.g. for admission of new parties, for dispensing a GATT member from certain GATT obligations (so-called "waivers"), or for adoption of amendments), the reference to the contracting parties acting collectively is indicated in the language of the article by using majuscules ("CONTRACTING PARTIES"). In such cases, decisions are taken at the periodic, as a rule annual, Conferences of GATT members or by correspondence. Some important substantive decisions specifically referred to in the articles of GATT (e.g. those mentioned *supra*) require a two-thirds majority; other substantive and procedural decisions require only a simple majority of the members present and voting (Art. XXV). In most cases, however, decisions have been taken without a formal vote (cf. → Consensus).

After it became apparent that the Havana Charter would not enter into force, an institutional structure representing the bare minimum required was gradually created by a series of decisions at GATT Conferences. After having initially used the services of the → United Nations, a permanent GATT Secretariat was established; its Executive Secretary (later named Director-General) has, since 1955, been entrusted with the functions of a depositary for GATT and its supplementary agreements. In the earlier years an intersessional committee was regularly set up by each GATT Conference for the period until the next Conference. In 1960, this committee was replaced by a permanent Council of Representatives (with membership open to all GATT members); this Council received authority to decide urgent or routine matters between the annual GATT Conferences unless a GATT member requested the deferment of the matter to the next Conference. The annual GATT Conferences have remained, however, the primary forum where all important decisions are taken.

In addition, for some important functions of GATT, several standing committees have been established: the Balance of Payments Restrictions Committee (1958), the Trade and Development Committee for matters relating to developing countries (1965), and the Consultative Group of 18 for high-level discussion of GATT policies (1975). Numerous *ad hoc* bodies (commissions, working groups, panels) for preparatory work specific consultations, and dispute settlement procedures have been set up by the GATT Conference or the Council. Although the provisions of GATT are silent on the establishment of subsidiary organs, the implied power of the CONTRACTING PARTIES (acting collectively through the Conference or the Council) to create the necessary institutional framework for the administration of GATT has not been disputed.

C. Amendments to GATT

Amendments to GATT are effected by protocols of amendment. They enter into force if accepted by two-thirds of the contracting parties, but only for those who have accepted them

(→ Treaties, Revision). The key provisions of GATT (Arts. I and II) and the amendment procedure itself (Art. XXX) may be amended only if accepted by all contracting parties. The procedure for the modification of the annexed "Schedules" of concessions is described in section III.B. *infra.*

GATT has been amended (under the régime of provisional application) by several successive protocols (1948: UNTS, Vol. 62, pp. 30, 40, 56 and 80; UNTS, Vol. 138, p. 334; 1949: UNTS, Vol. 62, p. 113; 1955: UNTS, Vol. 278, p. 320; 1965: UNTS, Vol. 572, p. 320), the most important being the addition of a new part IV (Trade and Development) which requires the contracting parties to pay special regard to the economic needs of the less-developed countries and not to ask for full → reciprocity in negotiating trade concessions with them. The effort of the 1955 Review Conference to transform GATT into a genuine international organization failed because the Agreement of March 10, 1955 for the establishment of an "Organization for Trade Cooperation" for the administration of GATT did not gain the necessary number of ratifications.

D. Supplementary Agreements

Apart from the time-consuming formal amendment procedure, other ways of improving the legal framework of GATT have been used. For the purpose of interpreting, implementing and, in certain sectors (textiles, agriculture), even modifying certain provisions of GATT, supplementary agreements have been negotiated among GATT members and put into operation separately. The most important are the Cotton Textiles Agreement (1962), succeeded by the Multifibre Textiles Arrangement (1973), and the Anti-Dumping Code Agreement (1967, revised 1979). Equally important are the Agreement on the Interpretation of Articles VI, XVI and XXIII relating to export subsidies and countervailing duties (1979), and the Agreements on Technical Barriers to Trade, on Import Licencing Procedures, and on Government Procurement (all 1979). This practice may be recommendable inasmuch as it provides for a more flexible and expeditious management of special problems which are of concern only to some GATT members, but it may also create intricate legal problems in the interpretation of the respective GATT provision regarding those GATT members which are not or are yet to become parties to such supplementary agreements.

III. INTERNATIONAL TRADE RULES BETWEEN MEMBERS

The object of GATT (according to its → Preamble) is the reduction of customs tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce (→ World Trade, Principles). The principal rules directed to this end are the following:

A. Most-Favoured-Nation Treatment

The basic rule (Art. I) is the obligation of GATT members to accord each other unconditional most-favoured-nation treatment in their mutual trade relations; any tariff or other concession granted by a GATT member to a "product" originating in or destined for any other country (not necessarily a GATT member) must be accorded "immediately and unconditionally" to the like product originating in or destined to all other GATT members (→ Most-Favoured-Nation Clause). This obligation relates not only to customs tariffs and other charges, but also to any other regulation affecting the imported or exported product. The most-favoured-nation treatment has not, however, been extended to other commercial transactions between GATT members which do not technically constitute import or export of "products", such as international transport (→ Traffic and Transport, International Regulation), transfer of patents, licences and other invisibles (→ Industrial Property, International Protection), or capital movements (→ Capital Movements, International Regulation).

Thus, a GATT member may claim, in principle, equal or non-discriminatory treatment of its exports and imports in any other member State of GATT. There are, nevertheless, some important exceptions to this rule, in part already contained in GATT articles and in part established by subsequent decisions of GATT Conferences by way of a "waiver" under Art. XXV:

(a) Frontier traffic advantages need not be extended to other GATT members (Art. V(1)).

(b) Preferential treatment in pre-existing zones (e.g. the → British Commonwealth, the French Union (→ France: Overseas and Dependent Territories), and Benelux (→ Benelux Economic Union)) could be maintained, but margins of preference were not allowed to be raised (Art. I(2 to 4)).

(c) GATT members entering a → customs union or → free trade area which fulfils the requirements of Art. XXIV are not obliged to extend the advantages under the internal régime of the customs union or free trade area to other GATT members; regional or bilateral preferential arrangements which do not fulfil these requirements may nevertheless be (and indeed have been in several cases) allowed by a special "waiver".

(d) Preferential tariffs granted by industrialized GATT members to imports from developing countries, including special advantages to the "least developed" among them, under the so-called Generalized System of Preferences, and the exchange of tariff and other trade concessions exclusively among developing countries on a global or regional basis for the expansion of their mutual trade have now become permanently allowed under the so-called "enabling-clause" in the decision of November 28, 1979.

The favourable attitude towards regional preference zones, even if they fall short of a full customs union, is based on the assumption that regional economic integration will stimulate the economic development within such zones and eventually result in a higher potential for international trade, provided that no new trade barriers are created by the participants in such zones *vis-à-vis* third countries.

B. Reduction of Tariffs

The tariff concessions made in 1947 by each GATT member in the first round of multilateral negotiations in Geneva which were embodied in the "Schedules" annexed to GATT, became thereby "bound", in the terminology of GATT, meaning that "bound" tariffs may not legally be raised or, if lowered to zero, reintroduced within successive three-year periods (Art. XXVIII). Even after the lapse of each period, they may be raised only by applying for renegotiation with those other GATT members which have a substantial interest in the respective tariff concession; if such negotiations fail, the aforementioned GATT member may nevertheless raise or modify the tariff, but in that case the other GATT members are, for their parts, also free to withdraw equivalent tariff concessions initially negotiated with the aforementioned GATT member. The "binding" of tariff concessions is to some extent weakened by the so-called "escape clause" (Art. XIX) under which a GATT member may suspend a tariff concession for a certain product if, due to "unforeseen developments", it is imported in such "increased quantities" as to cause or threaten "serious injury to domestic producers of like or competitive products", to the extent and for such time as it is necessary to prevent or remedy the injury; but here again, other affected GATT members may for their part suspend equivalent concessions. In practice, however, applications for the withdrawal of concessions and the rather rare cases of action under the "escape clause" have normally been settled successfully by negotiation (e.g. by offering alternative concessions of equal value).

Since 1947 six more general tariff negotiation "rounds" have been held within GATT: Annecy (1949), Torquay (1951), Geneva (1956), the "Dillon Round" (1960–1962), the "Kennedy Round" (1964–1967), and the "Tokyo Round" (1973–1979). As in 1947, the results were embodied in "Schedules" (either separate or consolidated with the earlier "Schedules" of each country) and by special protocols, which were signed and accepted by GATT members, made part of GATT and thereby "bound" with the legal effect described above. Each new "Schedule" entered into force between all GATT members as soon as it was accepted by the respective GATT member, with the proviso, however, that new concessions could be withheld as long as the principal supplier of the respective product had not yet accepted the protocol. Special tariff negotiation rounds have taken place where a new member had to offer concessions as the price of entry, and where the formation of a customs union affecting "bound" tariffs was concerned, as in the case of the common customs tariff of the EEC.

For the tariff negotiations, various procedures have been used. While in the first five rounds concessions were commonly negotiated between the principal supplier and purchasing countries on

a product-by-product basis, in the last two rounds tariff rates were reduced primarily in a more general way on a linear or percentage basis. The seven successive rounds have succeeded in eliminating tariffs for nearly half of the imports of industrial products and in reducing tariffs for the rest to between five and ten per cent on the average. Art. XXVIII^{bis} of GATT recognizes the desirability of periodic multilateral tariff negotiations for the further reduction of tariffs, but does not create a definite obligation or a fixed period of time for entering into such negotiations. Moreover, it seems that the efforts to reduce tariffs on industrial products have already reached their limit and that non-tariff barriers to trade have now become more significant than customs tariffs. Already the "Tokyo Round" focused more on the elimination of non-tariff barriers, on the treatment of agricultural imports, which had been largely excluded from previous negotiations, and on the encouragement of the export of tropical products from developing countries.

C. Non-Tariff Trade Barriers

1. National Treatment

GATT members are required to treat products imported from other GATT members, once they have passed customs, on the basis of complete equality with products of domestic origin (Art. III). The products of a GATT member imported into the territory of any other GATT member may not be made subject, directly or indirectly, to internal taxes or other charges in excess of those applied to "like" domestic products and must be accorded treatment no less favourable than that accorded to "like" products of national origin in respect of all laws, regulations and requirements affecting their internal sale, distribution or use. This provision of GATT is designed to prohibit internal laws and regulations which discriminate against imported products and might thereby impair the value of customs tariff reductions and other trade liberalization measures. In the application of this provision, difficulties of interpretation may arise as to the definition of "like" domestic products; an interpretative note (to Art. III, in Annex I of GATT) makes it clear that all products, which are "directly competitive or substitutable" may be considered as such. Subsidies, including income tax refunds to domestic producers, are expressly allowed (Art. III(8) (b)); but product-related tax rebates would probably be inconsistent with the object and purpose of this Article.

2. Quantitative Restrictions

Quantitative import or export restrictions of any kind (e.g. import or export quotas, restrictive use of import or export licences, controls of international payments for imported or exported products) are generally prohibited (Art. IX) because of their possible distorting effect on the normal flow of trade. They may be imposed only to the extent, and for the time necessary, on the following grounds: to prevent critical shortages of essential products in the exporting country, to protect the functioning of an internal marketing system for agricultural or fishery products, to safeguard the external balance-of-payments situation (Art. XII), or, under the "escape clause" (Art. XIX), to prevent serious injury to domestic production by a substantial increase of imports. If quantitative restrictions are resorted to, GATT prescribes elaborate rules to assure their non-discriminatory application (Art. XIII). They have to be applied in such a manner as to leave to each GATT member, as far as possible, a proportional share of its earlier trade either by opening global quotas or, if this is not feasible, by distributing quotas on the basis of an appropriate reference period. These rules also have to be applied where tariff quotas are used (i.e. where a favourable rate is limited to a certain quantity of imports, following the exhaustion of which a substantially higher or even a prohibitive rate is imposed). Exceptionally, quantitative restrictions for balance-of-payments reasons may discriminate against hard currencies under the same conditions as such discrimination is allowed with respect to foreign exchange restrictions under the → International Monetary Fund Agreement (Art. XIV). To avoid the imposition of quantitative restrictions in a balance-of-payments crisis GATT members have occasionally resorted to a general surcharge on all (including "bound") tariffs or equivalent measures (e.g. requiring prior payment deposits). Although such measures have no legal basis in GATT, they have been condoned in GATT practice because they were considered less discriminatory than

quantitative restrictions. Developing countries are practically exempted from the above-mentioned rules on quantitative restrictions because of their notoriously weak balance-of-payments position (Art. XVIII).

3. Anti-Dumping Duties and Subsidies

GATT recognizes the detrimental effect of dumping and subsidies on fair competition in international trade but, yielding to the reality of the widespread use of such practices, does not go so far as to lay down general prohibitions in this respect. GATT tries rather to avoid the escalation of such measures and countermeasures in the form of anti-dumping or countervailing duties by regulating the conditions and limits under which such duties may be imposed, thereby confining to a minimum their impact on the free flow of trade.

(*a*) *Dumping*

GATT authorizes the levying of anti-dumping duties, but restricts their use to those cases which come under its definition of dumping (lower export price than the usual price charged for the like product within the exporting country or, in the absence of such a price, lower than a price calculated on the basis of production costs plus a reasonable addition for selling costs and profit) and where "material injury" is thereby caused or threatened to the industry in the importing country. Moreover, the anti-dumping duty may not be higher than the margin of dumping (Art. VI(1 to 2)). To prevent abuses in the application of such duties, the industrialized GATT members which belong to the → Organisation for Economic Co-operation and Development (OECD) concluded the 1967 Agreement on Implementation of Article VI (the so-called "Anti-Dumping Code"). A revised version of the Code was adopted in 1979 and accepted by the EEC and most OECD States including Japan and the United States.

(b) Subsidies

Originally, GATT did not contain a restriction on the use of subsidies as instruments of economic policy. Only notification of their nature, extent, and reason was required if they had a likely impact on the volume of trade (Art. XVI(1)); the only countermeasure was to levy countervailing duties (Art. VI(3)). However, the 1955 revision of GATT added a restriction on the use of export subsidies on "primary" (i.e. agricultural, fishery, and forestry) products if the exporting GATT member would thereby get more than an equitable share of world exports in the respective product as compared with a previous representative period (Art. XVI(3)), and the so-called "stand-still provision" which urged the gradual elimination of export subsidies on other products (minerals and manufactured goods) and prohibited new or higher subsidies in the meantime (Art. XVI(4)). No agreement on the elimination of existing export subsidies on industrial products was forthcoming, but the main industrialized (OECD) countries, for their part, put the "stand-still" obligation first temporarily and later (in the Declaration of 1960) permanently into effect, while the developing countries still remain free to use production or export subsidies for their economic development. In any case, countervailing duties may be imposed by the importing GATT member on subsidized products under the same conditions as in the case of dumping (Art. VI(3 and 6): here also "material injury" must be present and the duty must be limited to the margin of subsidy). A supplementary Agreement on the Interpretation of Articles VI, XVI and XXIII, concluded in 1979, more clearly defines the conditions and procedures under which countervailing duties may be imposed; this agreement has already been accepted by the EEC and most OECD States, including Japan and the United States. The main cases which have given rise to controversy under the GATT provisions on subsidization of exported products are the United States Domestic International Sales Corporation system and the subsidization of the steel industry in the EEC.

(*c*) *Product-related taxes*

It is expressly recognized by Art. XVI(4) that the exemption of exported products from internal product-related taxes (e.g. value-added taxes) or the refund of such taxes upon export of the product do not justify anti-dumping or countervailing duties because, according to international practice, the importing country usually imposes its own product-related taxes on imported products.

4. Other Barriers

GATT contains further provisions designed to eliminate other non-tariff barriers such as those relating to the transit of goods (Art. V), methods of customs valuation, which gave rise to the controversy about the United States' use of the so-called "selling price system" for imported chemical products (Art. VII), fees and formalities connected with imports and exports (Art. VIII), and regulations concerning marks of origin (Art. IX). By supplementary agreements concluded during the Tokyo Round, rules concerning government purchases (restricting discrimination against foreign suppliers) and rules concerning so-called "technical" barriers (recommending the adoption of internationally recognized technical norms and standards) have been established.

D. State Trading

State-owned or State-controlled enterprises may, if guided by political considerations in their commercial activities, create obstacles to international trade. Therefore, in their dealings with imports and exports, they are under an obligation to act in a manner consistent with the general principle of non-discriminatory treatment and solely in accordance with commercial considerations (Art. XVII). Tariff concessions which are "bound" in the schedules may not be impaired by protectionist import practices of State monopolies (Art. II(4)). Additional safeguards are contained in the Protocols of Accession of Poland, Romania, and Hungary.

IV. DISPUTE SETTLEMENT

If a GATT member alleges that it has been deprived of its benefits under GATT by actions of other GATT members in violation of their obligations, the parties to the dispute are under an obligation to consult and negotiate with each other with a view to arriving at an amicable adjustment of the situation (Art. XXIII(1); → Peaceful Settlement of Disputes). If these negotiations fail, the aggrieved party may apply to the GATT Conference for an authorization to suspend an equivalent part of its obligations under GATT *vis-à-vis* the guilty party (Art. XXIII(2)); this sanction has so far been imposed only once in the history of GATT; all other disputes have been otherwise settled (→ International Obligations, Means to Secure Performance).

Within this rather simple GATT framework for conflict resolution, an elaborate dispute settlement mechanism has gradually been developed in GATT practice through the establishment of additional procedures for facilitating voluntarily settlements. These procedures contain elements of quasi-judicial adjudication (→ conciliation and mediation); they make extensive use of "working parties" which consist of all interested GATT members, including those involved in the particular dispute, or "panels" which consist of three or five neutral and independent experts, for the assessment of the factual and legal situation. These "working parties" or "panels" – whichever is deemed more suitable for the handling of the dispute – are set up by the GATT Conference or the Council. On the basis of their assessment of the situation and in consultation with the parties to the dispute, they report to the Conference or the Council with recommendations for appropriate action towards the settlement of the dispute. Most disputes have eventually been resolved by a voluntary settlement, or, where this could not be achieved, have been left undecided by → acquiescence of the parties.

These additional dispute settlement procedures have not been institutionalized by a formal amendment to GATT. An effort to institutionalize the panel procedure was rejected at the 1955 Review Conference because discretion and flexibility in the handling of disputes was preferred to the establishment of an obligatory quasi-judicial procedure. At the Tokyo Round, however, the CONTRACTING PARTIES adopted the "Understanding" of November 28, 1979, whereby they agreed that the customary practice in the field of dispute settlement which is described in the Annex to the Understanding, should be continued in the future. The supplementary agreements concluded at the Tokyo Round in 1979 make special provision for similar dispute settlement procedures before the standing specialized committees which have been set up under most of these agreements for their implementation.

V. ACHIEVEMENTS OF GATT

During the past 35 years of its existence GATT has effectively contributed to the continuous expansion of world trade particularly between the industrialized countries, although the full liberalization of international trade has still not been attained (world exports in nominal US dollars were 56 000 million in 1948, 128 000 million in 1960, 312 000 million in 1970 and 1 985 000 million in 1980). By the flexibility of its rules and procedures and by the pragmatism of its approach to trade conflicts, GATT has been able to preserve its legal framework for international trade and to keep new disintegrating trends (e.g. national and regional protectionism, growing State intervention, imbalance of the international monetary system (→ Monetary Law, International), persistent sectoral trade problems with regard to agricultural, textile and steel products, pressure by developing countries for more favourable terms of trade) within reasonable bounds despite their being aggravated by the world-wide recession. In its policy relating to developing countries where GATT competes with the → United Nations Conference on Trade and Development, GATT has, by according those countries non-reciprocal preferential treatment, taken far-reaching practical measures which have strengthened their competitive position in international trade.

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GÜNTHER JAENICKE

HEADQUARTERS OF INTERNATIONAL ORGANIZATIONS *see* International Organizations, Headquarters

INDUSTRIAL PROPERTY, INTERNATIONAL PROTECTION

A. Notion: 1. Definitions. 2. International Systems of Protection. – B. Historical Evolution of Legal Rules. – C. Current Legal Situation: 1. Paris Convention. 2. Patent Cooperation Treaty. 3. European Patent System. 4. African Intellectual Property Organization. 5. International Registration of Marks. 6. International Deposit or Registration of Industrial Designs and Appellations of Origin. – D. Special Legal Problems: 1. Revision of the Paris Convention. 2. Community Patent Convention; Community Trade Mark. 3. Budapest Treaty. – E. Evaluation.

A. Notion

1. Definitions

The notion of protection of industrial property is to be understood in the sense given to it by the Paris Convention for the Protection of Industrial Property of March 20, 1883. Art. 1(2) of that Convention states:

"The protection of industrial property has as its object, patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of

origin, and the repression of unfair competition."

The same Convention gives a rather broad definition of the term "industrial property" in Art. 1(3):

"Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products. . . ."

Together with copyright, industrial property forms part of the broader field of intellectual property, comprising, generally speaking, the creations of the human intellect. Copyright protects literary and artistic works (→ Literary and Artistic Works, International Protection). Both industrial property and copyright are within the competence of the same → United Nations Specialized Agency, the → World Intellectual Property Organization (WIPO).

The traditional definition of industrial property is universally accepted, although it is not entirely exact for essentially two reasons: the words "industrial property" as such, taken literally, would seem to be much broader than the objects of protection to which the definition relates and would, on the other hand, appear not to cover the fields other than industry proper which are included in the definition.

The protection of industrial property consequently comprises the protection of inventions, industrial designs, trademarks and service marks, trade names and certain geographical designations (indications of source and appellations of origin). It also includes the repression of unfair competition.

The various titles of protection of industrial property are not defined in any international treaty, and the concepts used in national legislation differ to some extent. Nevertheless, an attempt at a brief definition of the various titles shall be made here.

A patent is a title of protection granted for a patentable invention and embodied in a document also called "patent", issued by the competent government authority. Inventions are generally recognized to be the idea of an inventor which permits in practice the solution to a specific problem in the field of technology. Inventions are generally patentable if they are new, involve an inventive step (i.e., are non-obvious) and are industrially applicable. The patent as a title of protection means that anyone wishing to exploit the invention must obtain the authorization of the owner of the patent, unless the period of protection (usually 20 years from the application date) has already expired.

A utility model is a type of invention for which, in a number of countries (e.g. Federal Republic of Germany, Japan and Spain), a special title of protection is granted upon registration. The objects of protection are mainly devices in the mechanical field. The inventive step required is usually smaller and the duration of protection shorter than in the case of patents.

Another title of protection for inventions, the inventor's certificate, is mainly available in some countries with socialist planned economies, such as the Soviet Union. It differs from a patent in that the inventor has a right to a fixed remuneration, while the exclusive right of exploitation is vested in the State.

An industrial design is, generally speaking, the ornamental or aesthetic aspect of a useful article. The ornamental aspect could consist of the shape, pattern or color of the article. The article must be capable of industrial reproduction. A registered industrial design is protected against unauthorized copying during a period of 10 to 15 years.

A trademark or a service mark is a sign which serves to distinguish the goods or services of an industrial or commercial enterprise. The sign may consist of distinctive words, letters, numbers, drawings or pictures, emblems, colours or a combination of those elements. Most countries require that marks be registered with a government authority as a condition for protection. A protected mark or a mark confusingly similar to it may not be used by a person or enterprise other than its owner, at least not in connection with goods or services where such use would confuse the consumer. The team of registration is usually 10 or 20 years, with unlimited possibility of renewal.

A trade name or commercial name is the name or designation identifying a firm or industrial enterprise. Protection generally means that the trade name, or a confusingly similar designation, may not be used by another firm, whether as a trade name or trademark.

The protection of geographical designations applies to appellations of origin and indications of source. Appellations of origin are geographical names of a country, a region or a place which serve to designate a product originating therein, provided the characteristic qualities of the product are essentially due to the geographical environment. The impact of the geographical environment may be due to human factors, natural factors or both. The use of an appellation of origin is lawful only for a certain circle of persons or firms located in the geographical area for the specific products originating in that area (e.g. "Bordeaux", "Champagne").

Indications of source are geographical designations used to identify the origin of a product without having the more specific character of an appellation of origin. Both the Paris Convention for the Protection of Industrial Property and, in a more far-reaching way, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods protect against direct or indirect use of false or deceptive indications of the source of goods.

The repression of unfair competition is traditionally considered to be another element of protection of industrial property. The Paris Convention obliges the countries to provide for effective protection against unfair competition.

2. *International Systems of Protection*

International protection of industrial property means the international conventions, → treaties and agreements promoting and improving the protection of industrial property at the international level. With some exceptions, it does not mean universal or international titles of protection, such as a world patent. Generally speaking, for the granting of industrial property rights, the principle of territoriality applies, making a patent or a trademark registration effective only in the country for which the competent government authority has granted or registered that title. Consequently, as a rule, the owner of an invention or a trademark desiring protection in a plurality of countries must obtain such protection in each of the countries separately. There are five main exceptions to this rule:

(a) a Western European regional patent system based on the Convention on the Grant of European Patents (European Patent Convention) of October 5, 1973, administered by the → European Patent Organisation;

(b) the regional patents, utility models, trademarks and industrial designs granted or registered by the African Intellectual Property Organization (→ Regional Cooperation and Organization: African States);

(c) the two systems of international registration of trademarks under the Madrid Agreement concerning the International Registration of Marks of April 14, 1891, and the Trademark Registration Treaty of June 12, 1973, both administered by WIPO;

(d) the system of international registration of industrial designs under the Hague Agreement concerning the International Deposit of Industrial Designs of November 6, 1925, administered by WIPO;

(e) the system of international registration of appellations of origin under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, administered by WIPO.

(For a brief description of these systems, see section C. *infra.*)

Aside from the territorially limited international systems of protection referred to *supra*, the main emphasis in the field of international protection of industrial property lies in international instruments harmonizing certain aspects of national industrial property law, mainly by common rules in the field of substantive law, or facilitating the procedure for the obtaining of national industrial property rights (→ Unification and Harmonization of Laws).

The universal international conventions, treaties and agreements to be mentioned in this context are:

(a) the Paris Convention for the Protection of Industrial Property of March 20, 1883 (with later revisions; UNTS, Vol. 828, p. 305; WIPO Publ. 201(E); Industrial Property, Vol. 7 (1968) p. 122);

(b) the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891 (with later revisions; UNTS, Vol. 828, p. 163; WIPO Publ. 261(E); La Propriété industrielle, Vol. 74 (1958) p. 211; Industrial Property, Vol. 6 (1967) p. 290);

(c) the Nice Agreement concerning the Inter-

national Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957 (revised 1977; UNTS, Vol. 828, p. 191; WIPO Publ. 292(E); Industrial Property Laws and Treaties, Multilateral Treaties (IPLT), Texts 4-001 and 4-002);

(d) the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (revised 1978; UNTS, Vol. 815, p. 89; WIPO Publ. 293(E); IPLT, Text 1-004);

(e) the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968 (UNTS, Vol. 828, p. 435; WIPO Publ. 271(E); Industrial Property, Vol. 7 (1968) p. 320);

(f) the Patent Cooperation Treaty and Regulations of June 19, 1970 (ILM, Vol. 9 (1970) p. 978; WIPO Publ. 274(E); IPLT, Texts 2-006 and 2-007);

(g) the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971 (WIPO Publ. 275(E); Industrial Property, Vol. 12 (1973) p. 103);

(h) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1977 (WIPO Publ. 277(E); IPLT, Text 2-004);

(i) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks of June 12, 1973 (WIPO Publ. 266(E); Industrial Property, Vol. 12 (1973) p. 281; not yet in force);

(j) Vienna Agreement for the Protection of Type Faces and their International Deposit and Protocol to that Agreement concerning the Term of Protection of June 12, 1973 (WIPO Publ. 267(E); Industrial Property, Vol. 12 (1973) p. 263; not yet in force);

(k) Geneva Treaty on the International Recording of Scientific Discoveries of March 3, 1978 (WIPO Publ. 279(E); IPLT, Text 1-003; not yet in force);

Western European regional conventions to be mentioned in this category are the Council of Europe Convention on the Unification of Certain Points of Substantive Law on Patents for Invention of November 27, 1963 (Industrial Property, Vol. 3 (1964) p. 13) and the Council of Europe Convention relating to the Formalities required for Patent Applications of December 11, 1953 (La Propriété industrielle, Vol. 70 (1954) p. 21).

In force among the COMECON (→ Council for Mutual Economic Assistance) countries are the Agreement on the Unification of Requirements for the Execution and Filing of Applications for Inventions of July 5, 1975 (IPLT, Text 2-005) and the Agreement on the Mutual Recognition of Inventors' Certificates and Other Titles of Protection for Inventions, and Rules, of December 18, 1976 (IPLT, Texts 2-002 and 2-003).

In Latin America, recent examples are the Central American Agreement for the Protection of Industrial Property (Marks, Trade Names and Advertising Slogans or Signs) of June 1, 1968 (IPLT, Text 1-001) and the Cartagena Agreement of May 26, 1969 (Andean Subregional Agreement), Decision No. 85 (Industrial Property) of May/June 1974 of the Commission of the Cartagena Agreement: Regulations for the Application of Rules concerning Industrial Property (in force in Colombia, Ecuador, Peru; not yet implemented in Bolivia and Venezuela; Industrial Property, Vol. 13 (1974) p. 437).

(For a brief description of the main principles of some of the most important of these texts, see section C. *infra*.)

B. Historical Evolution of Legal Rules

Protection of industrial property did not exist in any form before the late Middle Ages, when the privileges granted by the sovereign in several European countries in the form of letters of protection (*litterae patentes*, or open letters) were extended for the first time to new inventions; this was so, for example, in England beginning with the 14th century. The first patent law in the world was a law promulgated in Venice on March 19, 1474. Of particular importance for the further development of patent law was the Statute of Monopolies of England of 1623. Towards the end of the 18th century, patent laws were adopted in the United States (1790) and in France (1791).

The development in other areas of industrial property was similar, in particular as regards trademark law. Again in the Middle Ages in Europe, signs of origin were developing with which products were marked for commerce. The first registration of such signs can be found in the 15th century. Registration was mainly imposed by

the sovereign to protect the public against fraud. No real trademark laws existed until the 18th century when laws were gradually developed in England and the United States. More laws in the field of industrial property were enacted in the 19th century, particularly in the second half. This legislative activity coincided with the development of industry and commerce.

There was no international protection of industrial property until the late 19th century, when it was felt that increased trade and the development and use of new technologies made it imperative to look for possibilities to protect industrial property rights in more than one country. Before the existence of any international convention, it was rather difficult to obtain such protection in various countries. The laws were very different and applications had to be made roughly at the same time in all countries. Once more and more countries had developed systems for the protection of industrial property, there was a general urge for harmonization on an international basis. This gave rise, in the 1870s, to the idea of concluding an international convention in the field of industrial property. Several international congresses were held to prepare the convention. Finally, a Diplomatic Conference was convened in Paris in 1883, which culminated in the signature, on March 20, 1883, of the Paris Convention for the Protection of Industrial Property ("Paris Convention").

The Paris Convention came into effect in 1884 for only 14 States. At the end of the 19th century, the number of member countries had risen merely to 19. It was only during this century, and, in particular, after World War II, that a higher number of countries acceded to the convention. There are now 91 parties to it.

In addition to periodic revisions of the Convention itself, 12 special agreements of universal character have been concluded within the framework of the Paris Convention in order to perfect the system of international protection.

C. Current Legal Situation

1. Paris Convention

The Paris Convention has undergone a series of periodic revisions which have led to the adoption of revised Acts of the Convention (→ Treaties, Revision). The most recent applicable Act is that of Stockholm of 1967 to which the great majority of countries are parties. For a small number of countries, however, the earlier Acts of The Hague of 1925, London of 1934 or Lisbon of 1958 are the most recent applicable ones.

The provisions of the Paris Convention as last revised may be subdivided into four main categories.

(a) A first category of provisions contains rules of substantive law that guarantee the right to national treatment in each of the member countries. This means that each country party to the Paris Convention must grant the same protection to nationals of the other member countries as it grants to its own nationals.

(b) A second category of provisions establishes a basic right known as the right of priority. This means that on the basis of a regular first application for an industrial property right filed by the applicant in one of the member countries, the applicant may, within a specified period (6 or 12 months), apply for protection in all the other member countries. These later applications will then be regarded as having been filed on the same day as the first application.

(c) A third category of provisions defines a certain number of common rules in the field of substantive law which either establish rights and obligations of natural persons and legal entities or require or permit the member countries to enact legislation following these rules. There are quite a number of such common rules of substantive law. They relate to patents, trademarks, industrial designs, trade names, indications of source and unfair competition.

(d) A fourth category of provisions deals with the administrative framework, including the final clauses, of the Convention. (As to the current revision of the Paris Convention, see section D. *supra*.)

2. Patent Cooperation Treaty

The most important universal treaty in the patent field at this stage is the Patent Cooperation Treaty (PCT). It establishes a system designed to assist applicants, industry and patent offices in avoiding a good part of the tremendous duplication of work that is the consequence of individual national procedures for the grant of

patents in each country. The PCT does so by providing for the filing of international applications where protection is sought in several countries. That filing has the same effect as if national applications had been filed separately in all those countries. Not only the filing, but also the search for the relevant prior art, the publication of the application and, where relevant, the examination as to patentability are done in the form of a centralized international procedure. Thereafter, it is for the applicant to decide whether he or she wants to continue the procedure to obtain a patent before the national offices concerned. As of 1982, this Treaty had 32 contracting States. More than 4500 applications are filed per year, mainly in English, under this new system, which has been applicable since 1978.

3. European Patent System

The most far-reaching system of protection of inventions on an international basis is contained in two regional conventions concluded among Western European States, the Convention on the Grant of European Patents (European Patent Convention) of October 5, 1973 (Industrial Property, Vol. 13 (1974) p. 51) and the Convention for the European Patent for the Common Market (Community Patent Convention) of December 15, 1975 (Official Journal of the European Communities, Vol. 19 (1976) No. L 17; IPLT, Text 2-001).

The European Patent Convention provides for the grant of European patents by the European Patent Office in Munich on the basis of a uniform patent law embodied in the Convention. Once a European patent is granted, it has largely the same effect as a national patent in each member State. At present, roughly 20 000 European patent applications are filed annually under the new system, which has been applicable since 1978.

The European Patent Convention establishes a system which does not replace, but is additional to, the national patent systems of the member States (complementary regional system). For the Community Patent Convention, which is not yet in force, see section D.2. *supra.*

4. African Intellectual Property Organization

Another regional system for the protection of industrial property rights is that established by the Agreement relating to the Creation of an African Intellectual Property Organization of March 2, 1977 (with Annexes), and Regulations of February 22, 1979 (IPLT, Texts 1-005 and 1-006), revising an earlier Agreement of 1962 among the same group of 12 French-speaking African countries. The headquarters of the Organization is in Yaoundé, Cameroon. The annexes to the Agreement contain, in particular, laws on patents, utility models, trademarks and service marks, industrial designs and protection against unfair competition, which are uniform for all countries and are applicable in lieu of national laws (exclusive regional system). The Office of the Organization grants industrial property rights valid in all member States.

5. International Registration of Marks

The two systems of international registration of trademarks are the traditional system under the Madrid Agreement concerning the International Registration of Marks of 1891, as last revised in Stockholm in 1967, together with Regulations of June 21, 1974 (UNTS, Vol. 828, p. 389; WIPO Publ. 260(E); Industrial Property, Vol. 6 (1967) p. 291, Vol. 13 (1974) p. 335), and the more modern system of the Trademark Registration Treaty (TRT) of 1973 (WIPO Publ. 265(E); Industrial Property, Vol. 12 (1973) p. 215). Both systems are in principle quite similar. They provide for the registration of marks (trademarks and service marks) at the International Bureau of WIPO. An international registration has the same effect as a national registration in each of the designated States, but each State has the right to refuse recognition of the effect within a certain period of time. The main difference between the Madrid system and the TRT system is that under the Madrid system a prior national registration of the mark is needed as a basis for the international registration; moreover, the international registration remains dependent to some extent on that basic mark. Under the TRT system, no previous national registration is required. The TRT enables an applicant to obtain protection of the mark in several countries by filing only one international application in one language. Renewal of the international registration is equally centralized and simple. The Madrid system comprises 25 member States, whereas the TRT, after its recent entry

into force among 5 States, has only barely started to become operational in practice.

6. International Deposit or Registration of Industrial Designs and Appellations of Origin

Systems providing for international deposit or registration with the International Bureau of WIPO also exist in the fields of industrial designs and appellations of origin. The first such system was established under the Hague Agreement of 1925 concerning the International Deposit of Industrial Designs (LNTS, Vol. 74, p. 327). This Agreement was revised at London in 1934 and at The Hague in 1960 and has been complemented by the Additional Act of Monaco of November 18, 1961, the Complementary Act of Stockholm of July 14, 1967, the Protocol of Geneva of August 29, 1975, and Regulations (WIPO Publ. 262(E); IPTL, Texts 4-001 and 4-002). The 1960 Act has not yet entered into force, but its substance is applicable to some extent in view of the Geneva Protocol of 1975, which establishes a link between the two different systems under the London Act of 1934 and the Hague Act of 1960 adhered to by different groups of countries. The common principle of both systems is that protection in several States may be secured by means of an international deposit of an industrial design with the International Bureau of WIPO. The Hague Union comprises 17 States.

International protection of appellations of origin may be secured through registration under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958, as revised in Stockholm in 1967, with Regulations of October 5, 1976 (UNTS, Vol. 923, p. 189; WIPO Publ. 264(E); IPLT, Text 5-001). The registration must be made by the competent authority of the interested country with the International Bureau of WIPO. All States must protect the internationally registered appellation, except for those opposing the registration within one year. The Lisbon Union comprises 15 States.

D. Special Legal Problems

1. Revision of the Paris Convention

In 1974, preparations began for a further revision of the Paris Convention, which culminated in 1980 in a first session of a Diplomatic Conference in Geneva. That Conference continued in late 1981 in Nairobi and in late 1982 in Geneva. The major legal and political issues which have triggered the current revision process can be grouped in two parts:

The → developing States seek provisions allowing preferential treatment for them under the international system of industrial property (→ International Economic Order). Their demands are mainly directed towards amending the provisions on compulsory licences in Art. 5A of the Paris Convention. The changes proposed would allow developing countries to enforce the working of patented inventions earlier and apply more stringent sanctions against non-working. Other proposals are directed towards fee reduction in favour of nationals from developing countries. There are divergent views among the interested groups of countries as to these proposals (→ International Law of Development).

The COMECON countries seek provisions establishing an equal status for patents and inventor's certificates, which so far is not provided in the Convention. The legal issue here is that the new system must safeguard in an appropriate manner the right of free choice of the applicant between a patent or an inventor's certificate as a title of protection for his or her invention in countries where inventors' certificates exist. This is necessary as a foreign applicant draws little benefit from an inventor's certificate. The legal modalities of this solution have created much controversy among the industrialized countries in East and West.

2. Community Patent Convention; Community Trade Mark

The special legal and economic problems created by the principle of territorial limitation of industrial property rights for the Common Market established in the framework of the → European Economic Community have led to two special schemes in the field of industrial property which are not yet operational: the Community Patent Convention and the plan for a Community Trade Mark.

The Community Patent Convention was concluded in 1975, but is not yet in force. Its objective is to supplement the European Patent Con-

vention for the Common Market countries by providing a uniform European law that would be applicable to a granted European patent (which, in fact, is a bundle of national patents) instead of the national laws now applied. The European patent therefore will become, for the territory of the Common Market, a uniform Community patent which could no longer be used to fractionalize the Common Market. Difficult problems of constitutional law, in particular in Denmark and Ireland, and of the implementation of the principles of the Convention in the field of (still national) patent litigation have so far prevented the entry into force of the Convention.

In late 1980, the Commission of the → European Communities submitted proposals to the Council for a Regulation on Community Trade Marks and for a First Council Directive to Approximate the Laws of the Member States Relating to Trade Marks. The purpose of both proposals is to eliminate the harmful effects of the fractionalizing of the Common Market by national trade marks. The Community Trade Mark system is intended to establish a regional trademark system for the Common Market, coexisting with the national systems. The draft Directive has as its objective the elimination, as far as possible, of the harmful effects of the national trademark systems on the Common Market by harmonizing those laws. These drafts will now have to be examined in detail by the Council and the European Parliament and it is expected that further procedures will take several years.

3. Budapest Treaty

A special legal problem in the field of patent protection has recently been solved by the entry into force of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 1977. Normally, an invention is disclosed in a patent application by means of a written description. Where an invention involves a microorganism which is not available to the public, a written description is not sufficient for disclosure. In many countries the deposit of a sample of the micro-organism with a specialized institution is required in addition to the description. This has led to the multiplication of complex and costly procedures of deposit in each such country. The Budapest Treaty provides for an internationally recognized deposit in order to eliminate the multiplication of deposits and to satisfy at the same time the legal requirements of disclosure of all contracting States. The deposit must be made with one of several recognized international depositary authorities and will then suffice for the purposes of patent procedure before the national patent offices of all contracting States.

E. Evaluation

The international industrial property system is not monolithic. Under the roof of the Paris Convention, establishing generally applicable principles of substantive law, it is subdivided into a series of special agreements on the universal and regional levels concluded among groups of countries whose composition varies from agreement to agreement.

A need for international cooperation in the field of industrial property was recognized as soon as industrial property systems were established in a significant number of countries. Enhanced international commerce, the development of advanced technologies and the international cooperation and division of labour in research and development have expanded the need for facilitating the protection of industrial property rights on the international level.

The existence of satisfactory protection, in particular in developing countries, is a stimulant for enhancing → technology transfer. An adequate revision of the existing system of the Paris Convention in favour of developing countries while preserving the principles of that Convention will assist in facilitating world-wide acceptance of the international system of industrial property. Far more important for developing countries than appropriate treaty provisions, however, are measures to assist in the enactment of legislation and in the building up of the necessary industrial property infrastructure, including training, in those countries. The development cooperation programme of WIPO is of particular significance in this context.

Possibilities to reach substantial improvement of the existing system of international protection are rather limited at the universal level. It remains utopian to strive for a world patent or other universal industrial property rights. Regional

cooperation in the field of industrial property, following the model of the European Patent Organisation or the African Intellectual Property Organization, allows the setting up of more far-reaching schemes. It should be promoted especially in areas where the setting up of satisfactory national systems is unrealistic and uneconomical. The recent creation of an Industrial Property Organization for English-speaking Africa, with headquarters in Nairobi, Kenya, on the basis of the Lusaka Agreement of December 7, 1976 (IPLT, Text 1-002) is a positive sign and a step in the right direction.

Nevertheless, action at the universal level is also needed. New technological developments, particularly in the areas of computer technology, the technological uses of micro-organisms, the perfection of industrial espionage, the proliferation (facilitated by modern means of reproduction and the like) of piracy concerning protected creations, have significant economic and social effects of an international nature which require appropriate universal action. In other words, the international industrial property system must be reviewed and, where necessary, adapted from time to time, in order to be able to respond in a satisfactory manner to the requirements emanating from any new developments on the technological, economic or social level.

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INMARSAT

The Convention on the International Maritime Satellite Organization (Inmarsat) was sponsored by the Inter-governmental Maritime Consultative Organization (IMCO; now the → International Maritime Organization (IMO)) and was concluded on September 3, 1976. It entered into force on July 16, 1979; 29 countries, including the United States and the Soviet Union, had joined by the end of that year.

Inmarsat has some resemblances, both structural and functional, to → Intelsat. Inmarsat was established by an inter-governmental Convention, of which a separate Operating Agreement forms an organic part. Its purpose under Art. 3(1) of the Convention is:

> "to make provision for the space segment necessary for improving maritime communications, thereby assisting in improving distress and safety of life at sea communications, efficiency and management of ships, maritime public correspondence services and radio determination capabilities".

Furthermore, Inmarsat must "act exclusively for peaceful purposes" (Convention, Art. 3(3)).

Maritime communications are far from perfect. Ships are lost without trace, perhaps through bad atmospheric or electronic interference with signal transmissions; and the burden on radio frequencies can make for delays in shipping movements, and in communications with ports. Satellites can ease these situations.

The "space segment" covered by Inmarsat is defined in similar terms to that in Intelsat, being: "the satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of these satellites" (Art. 1(d); → Satellites in Space).

As in Intelsat, it is recognized that the national participants in Inmarsat will be telecommunications operators, which may be governmental departments or agencies, or commercial corporations. Each party to the Convention will then designate its operator as the "competent entity, public or private", subject to its jurisdiction; these "designated entities" sign the Operating Agreement, which has thus a different legal status from the Convention. Further, not only must the relations between the party to the Convention and the designated entity be governed by the domestic law (Art. 4(a); → International Law, References to Municipal Law), but the party is expressly declared to be "not liable for obligations arising under the Operating Agreement" (→ Space Activities, Liability for). However, the party is responsible for ensuring that the entity observes the obligations arising under the Convention or under "related international agreements" (Art. 4(c)). Further, there is express exoneration of the organization, party or designated entity from any liability for "loss or damage sustained by reason of any unavailability, delay or faultiness of telecommunications services provided..." (Operating Agreement, Art. XII; see also → Telecommunications, International Regulation).

Inmarsat has what may be called the classic structure of an Assembly, a Council and a Director-General (→ International Organizations, General Aspects), but with a critical difference. While the Assembly is composed of one representative from each party to the Convention, each having one vote, the Council is composed of 18 representatives of the "designated entities" (or of consortia of them) which have the largest investment shares in Inmarsat and four representatives of "designated entities" elected by the Assembly. The purpose is to secure "just geographical representation ... with due regard to the interests of the developing countries" (Convention, Art. 13; → Developing States). The Council also has → weighted voting.

The system is administered by the Council, which must have "due regard for the views and recommendations of the Assembly" (Art. 13). The management is then in technical hands, and so not unlike that of Intelsat when the Communications Satellite Corporation (Comsat) was its manager. The Director-General is essentially the internal administrator, being "the chief executive and legal representative of the Organization ... responsible to and under the direction of the Council" (Art. 16(3)). Important features are the financing of Inmarsat and the system of procurement. Inmarsat may own or lease the space segment (Art. 6). The investment shares of the "designated entities" are to be determined on the basis of the "utilization of the INMARSAT space segment ... measured in terms of the charges levied by the Organization" for that use (Operation Agreement, Art. V(1)). Capital contributions to Inmarsat, on which its operations will depend, are proportionate to the investment shares (Arts. III and IV). The initial percentages of investment were: United States 23.5 per cent; the Soviet Union 14.1 per cent; the United Kingdom 9.9 per cent; Norway 7.9 per cent and Japan 7 per cent. At the other end of the scale, Egypt and Algeria had 0.05 per cent each. In the procurement policy to be followed by the Council for the acquisition of goods or services by purchase or lease, the requirement of efficiency prevails over the principle of equal distribution of contracts. The policy must "encourage, in the interests of the Organization, world-wide competition in the supply of goods and services". Therefore contracts are to be awarded, based on responses to open international initiatives to tender, "to bidders offering the best combination of quality, price and the most favourable delivery time" (Convention, Art. 20(1)). The award of contracts will then go, initially at least, to the more technically advanced countries.

The problem of the establishment of competitive regional organizations is recognized, but not wholly resolved. A party to the Convention is required simply to notify Inmarsat if "it or any person within its jurisdiction intends to make provision for, or initiate the use of, individually or jointly, separate space segment facilities to meet any or all of the purposes of the INMARSAT space segment. . . ." (Art. 8(1)). Then, "to ensure technical compatibility and to avoid significant economic harm to the INMARSAT system", the Council and the Assembly may make non-binding recommendations. (Compare → European Space Agency). The establishment of regional systems is thus in effect accepted, though the principle of "harmful interference", recognized in the → International Telecommunication Union (ITU) system in regard to the use of radio frequencies, is cast here in economic terms, which are broader and vague.

Inmarsat is not, despite its characteristic structure, regarded as part of the → United Nations family, though it necessarily has working relations with IMO and ITU. Its structure is important in that it establishes a permanent working relationship on the international level between governments and technical commercial corporations.

Inmarsat is an outstanding example of modern international cooperation overcoming the saturation of frequencies, which caused long delays for shipping. It provides a telecommunication service which increases the efficiency of navigation and the safety of life at sea. As part of this service, it is contributing to the important development of transfrontier ground stations. It is also a means of collaboration between governments, industry and commerce. Participants in Inmarsat, as in any "designated entity", include government agencies and independent enterprises; for example, for the United Kingdom, Cable and Wireless, as a shareholder, and Post Office International Communications Executive are both participants; and for the United States, it is Comsat General, a commercial enterprise. It also brings together a large number of countries which vary greatly in resources and marine activities: the United States and the Soviet Union are the major investors, while the United Kingdom, Japan and Norway accounted together for a quarter of the initial investment, and Brazil, Poland, Kuwait, India and Singapore are among the participants.

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INTELSAT

A. Background

1. International

The establishment of an international telecommunications satellite system in 1964, in the form of Intelsat, was a response to a number of forces: the new potentialities of access to and uses of outer space (→ Space and Space Law); the common interest, widening with the new independence of many countries, in telecommunications; the predominance of the United States, primarily in private enterprise, and the Soviet Union in early space technology; the need of Western European countries to cooperate, and a conflicting desire to compete, in the development of space technology; and the differing attractions of global and regional systems of space telecommunications (→ Telecommunications, International Regulation).

In the first five years after the dramatic flight of Sputnik in 1957, a number of resolutions were adopted in the → United Nations, the → International Telecommunication Union (ITU) and the → United Nations Educational, Scientific and Cultural Organization on, for example, the

peaceful uses of outer space, and the use of earth satellites for education and meteorology. In this period, the United States also concluded many bilateral agreements with other countries on the tracking of satellites, and on experiments with and testing of communication satellites (→ Satellites in Space). Further, in Europe the Commission préparatoire européenne de recherche spatiale (COPERS), set up in December 1960, brought about the establishment of a European Space Research Organization (ESRO) in June 1962, original members being Belgium, Denmark, the Federal Republic of Germany, France, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. All except Denmark, Spain, Sweden and Switzerland joined the European Launcher Development Organisation (ELDO), initiated by the United Kingdom and France. Australia (for the Woomera launching site) and Italy also joined. Intersputnik was not established until 1968, invitations to join being extended to Western countries, but its participants were limited to Bulgaria, Cuba, Czechoslovakia, the German Democratic Republic, Hungary, Mongolia, Poland, Romania and the Soviet Union (Agreement of November 15, 1971).

2. *Comsat*

In August 1962 the United States Congress enacted the Communications Satellite Corporation Act (47 USC §§ 701 et seq.). Section 102 of the Act declares the broad object, which is "to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network" (§ 701(a)), which would be responsive to national objectives and world-wide communications needs, and which would contribute to world peace and understanding.

The Communications Satellite Corporation (Comsat) was authorized by Section 305 of the Act to:

> "(1) plan, initiate, construct, own, manage and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;
> (2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and
> (3) own, and operate, satellite terminal stations when licensed by the [Federal Communications] Commission . . . ." (§735(a))

Comsat was a private United States corporation, created and governed by United States law. It was also required, in somewhat vague terms, to submit to Presidential supervision and to seek counsel from the Department of State, given the international range of its tasks.

3. *The Approach to Intelsat*

(*a*) *General problems*

Two general problems faced countries in this period: first, the growing need for fair allocation and use of earth satellite orbits, which are spatially limited in number, and for continued international regulation for space telecommunications of the allocation and assignment of radio frequencies, again a limited natural resource; and second, whether a global system of space telecommunications was practicable, or whether regional systems were, on both technical and commercial grounds, to be preferred.

Further, the kinds of space telecommunications must be distinguished; communications in the form of telephone and telegram exchange, traditionally by cable; information services, for example, on stock market prices and, more recently, data bank material; broadcasting by radio and television; and special services for air and sea navigation. Intelsat was designed largely for the first three services. International cooperation in the last field was not regulated until the 1970s, when → Inmarsat was created.

(*b*) *Western Europe–United States relations*

The technological dominance of the United States in spacecraft hardware, launching systems and operational experience made Western European countries, now ambitious to develop space telecommunications, heavily dependent on cooperation with the United States; on the other hand, some countries, led by France, were strongly competitive with the United States, not only for industrial and commercial reasons, but also due to regional interests.

(c) The alternatives

Thus in the Intelsat negotiations the United States Government argued not only for a single global system, but for its management by Comsat. The former found some technical justification in the United States launching in 1963 of a synchronous or geostationary satellite: Three such satellites could effectively provide telecommunication services to most inhabited areas of the globe. The latter expressed both a traditional United States faith in private enterprise (albeit under some governmental regulation), and the attitude of the powerful lobby for Comsat in Congress and in industry, which would have preferred the lease of channels by bilateral agreements.

At the opposite extreme would have been the establishment of an international organization for satellite telecommunication services, modelled on the → United Nations Specialized Agencies: The legal structure would have been an assembly of governments, determining issues of policy and planning, including the rights of participation of countries in the system; an executive board of government representatives, authorized to supervise the practical administration of the system, and a largely technical secretariat, primarily responsible for the day-to-day management (→ International Organizations, General Aspects). Though favoured by some countries, there were insurmountable obstacles. On the one hand, given the primacy, both commercial and technological, of Comsat, it would have been impossible to substitute an inexperienced international secretariat for it, making, as it were, the organization Hamlet without the Prince of Denmark. On the other hand, Western countries hoping to develop earth satellite uses, nationally or regionally, were not able to accept subordination to a permanent international institution.

B. Structure and Functions of Intelsat

1. The Compromise

The form of Intelsat, upon which agreement was reached by the original 19 participating countries in 1964, was a compromise in three important legal respects: A consortium or partnership took the place of an international corporate body, having a legal personality of its own and ownership and control of the system; Comsat, a corporation wholly governed by United States law, was nevertheless to be the manager of what was essentially an inter-governmental enterprise and any "communications entity, public or private", designated by a government, could participate; the whole arrangement was provisional, it being agreed that after five years it would be reviewed in prospect of definitive arrangements. This provisional arrangement resembled that adopted in 1948 for the → General Agreement on Tariffs and Trade. In both cases there was a common recognition of the overwhelming need for international regulation, but sufficient disagreement on particular policies to make governments hesitate to commit themselves too far.

2. The Interim Agreements

Since the partnership comprised governments and "communication entities", including Comsat, it was formally to conclude two agreements: the Agreement establishing Interim Arrangements for a Global Communications Satellite System, and a Special Agreement (both opened for signature on August 20, 1964; UNTS, Vol. 514, p. 25). The first was an international agreement, concluded exclusively between governments, and registered under Art. 102 of the → United Nations Charter (→ Treaties, Registration and Publication). The second was a contractual arrangement between governments and public corporations, responsible for telecommunications: among the latter, in addition to Comsat, were the Overseas Telecommunication Corporation (Canada) and Kokusai Denshin Denwa Co. Ltd. (Japan).

The partnership was to provide for "the design, development, construction, establishment, maintenance and operation of the space segment of the global commercial communications satellite system" (Interim Agreement Act I(a)); and the space segment was to comprise "the communications satellites and the tracking, control, command and related facilities and equipment required to support the operation of the communications satellites" (Art. I(b) (i)). The space segment was to be "owned in undivided shares by the signatories to the Special Agreement in proportion to their respective contributions to the costs" (Art. III), estimated initially at US $200 000 000. Contribu-

tions were based on quotas, assigned to each participant in the Special Agreement, the principal quota holders being Comsat, 61 per cent; the Postmaster General of the United Kingdom, 8.4 per cent; the French Government, 6.1 per cent; and the Deutsche Bundespost of the Federal Republic of Germany, 6.1 per cent.

An Interim Communications Satellite Committee was composed of representatives of participants in the Special Agreement, each having votes equal to quotas; where participants had quotas less than 1.5 per cent, for example, Belgium and Norway, they would have one shared representative casting votes equal to the two quotas. Both the quota system and the related voting rights are reminiscent of the system used in the → International Monetary Fund (→ Weighted Voting). But the obviously controlling vote, held by Comsat, was limited to some extent by the requirement that certain prescribed decisions "must have the concurrence of representatives whose total votes exceed the vote of the representative with the largest vote [Comsat] by not less than 12.5" (Art. V(c)).

Comsat was to "act as the manager in the design, development, construction, establishment, operation and maintenance of the space segment", but "pursuant to general policies of the Committee and in accordance with specific determinations which may be made by the Committee" (Art. VIII). The dominant position of Comsat in the Committee made these qualifications of little effect; this is illustrated by the policy followed in the placing of contracts under the system. To this point there were understandably different approaches. The United States considered with some reason that contracts should be mainly placed with United States industry, given its advanced technology and constructional developments. European countries argued for assignment of contracts proportionate at least to quota contributions; they questioned why their contributions should be used to finance United States industry. The less developed countries (→ Developing States), joining the system later, complained that since assignment of technically advanced contracts to them was not practicable, they should receive some technical assistance in exchange (→ Economic and Technical Aid; → Technology Transfer; → International Economic Order). The Agreement did not wholly resolve the conflict, Art. X providing that:

> "In considering contracts and in exercising their other responsibilities, the Committee and Corporation as manager shall be guided by the need to design, develop and procure the best equipment and services at the best price for the most efficient conduct and operation of the space segment."

But given comparability of tenders in these terms, they:

> "shall also seek to ensure that contracts are so distributed . . . in approximate proportion to the respective quotas of their corresponding signatories to the Special Agreement . . . ."

The two principles are hardly compatible.

Another cause of discontent among the participants was that, in the gradual expansion of the satellite system, Intelsat II and III could not be introduced by Comsat without licence from the United States Federal Communications Commission.

3. The Definitive Agreements

Nevertheless, despite the growing regional competition, evidenced by the Franco-German Symphonie satellite programme, Intelsat continued to expand; over 80 countries had joined the system when, after two years of negotiations, the Definitive Agreements were concluded on August 20, 1971 (ILM, Vol. 10 (1971) p. 909), entering into force in February 1973. Essential features were structural changes and the recognition of regional satellite systems. The assembly of participants, whether representatives of governments or communication entities, would "give consideration to those aspects of Intelsat which are primarily of interest to the Parties as sovereign States", and each participant would have one vote. A Board of Governors, similarly composed, replaced the Interim Communications Satellite Committee and the controlling vote of the United States thus disappeared. Finally, Comsat, although remaining in existence for a further six years, was gradually to transfer its tasks and responsibilities to the new Director-General and his Secretariat. In form, Intelsat had become similar to a Specialized Agency.

A compromise resolution was adopted on the relation between Intelsat and regional satellite

systems, laying down two principles. First, before the establishment of such a system, the Assembly of Parties must be consulted, through the Board of Governors, and "shall express, in the form of recommendations, its findings regarding the considerations set out . . . ." Secondly, these considerations were "to ensure technical compatibility of such [regional] facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned Intelsat space segment and to avoid significant economic harm to the global system of Intelsat".

In practice, some reconciliation of activities and interests between Intelsat and regional systems has been achieved. A recent example is the decision of Intelsat in 1980 to order a further two Ariane satellite launchings by the → European Space Agency, which replaced ESRO and ELDO in 1979, as part of the Intelsat V series.

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INTERGOVERNMENTAL COMMITTEE FOR MIGRATION

The Intergovernmental Committee for Migration (ICM) has its origins in a resolution adopted on December 5, 1951 by an Intergovernmental Migration Conference convened by the Belgian Government upon the initiative of the United States Government. The States interested in migration had at that time generally recognized that it was not feasible to maintain on a permanent basis the comprehensive and costly structure of the → International Refugee Organisation which, *inter alia*, had dealt with the resettlement of displaced persons and → refugees in the post-war period. Alternative arrangements were necessary to deal with the residue of the World War II problem of displaced persons and refugees in Europe and of future refugee movements, as well as to meet pressing needs in the field of national migration (→ Migration Movements; → Emigration; → Immigration).

The Brussels Conference adopted a resolution to establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe and laid down basic principles for the activities of that Committee. The Committee began operational activities with 14 members in February 1952. On November 15, 1952 the Committee's name was changed to the International Governmental Committee for European Migration. In the framework of that Committee, a constitution was drafted which entered into force on November 30, 1954 (UNTS, Vol. 207, p. 189). On November 19, 1980 the ICM Council decided to change the designation of the organization to the Intergovernmental Committee for Migration.

The ICM has its headquarters in Geneva, Switzerland. At the beginning of 1982 it maintained field offices in 35 countries around the world, with substantial representations in South-East Asia, Latin America and Europe. The organization's staff at headquarters and in the field totalled approximately 300 persons (under the regular budget); in addition, it employed around 450 temporary employees (under special programmes).

The ICM's membership in 1982 consisted of 29 governments. Fourteen other governments have observer status. In addition, several international governmental and → non-governmental organizations cooperate in the programmes which the ICM operates. In its refugee programmes, it maintains a particularly close working relationship with the United Nations High Commissioner for Refugees (→ Refugees, United Nations High Commissioner).

The ICM Council, which normally meets once a year, comprises representatives of all member governments and observers from interested governments and international governmental and non-governmental agencies (→ International Organizations, Observer Status). The Council has authority to take final decisions on policy, programmes and financing.

The ICM Executive Committee is comprised of

representatives of nine member governments, elected each year by the Council. It prepares the work of the Council and makes recommendations on the basis of reports received from two sub-committees.

The ICM has a two-part budget. Its administrative costs are financed by mandatory contributions from all member governments in accordance with an agreed percentage scale (→ International Organizations, Financing and Budgeting). The ICM's operational expenditures are met by voluntary contributions mainly from governmental sources but also from contributions by intergovernmental and non-governmental agencies dealing with migration, migrants themselves or their sponsors. The 1981 administrative budget of the ICM amounted to $7.4 million; its operational budget was $141.9 million.

The ICM has as its current objectives:

(a) the processing and movement of refugees from asylum or transit areas to countries offering them permanent settlement opportunities;

(b) the organization and management of orderly, planned migration to meet specific needs of both countries of emigration and immigration;

(c) → technology transfer through specialized human resources in order to promote the economic, educational and social advancement of → developing States (→ International Law of Development).

Under its programmes, the ICM arranges for the transportation of migrants at significantly reduced costs and finances the movement of those refugees and migrants who are unable to meet their own travel expenses. Its services include activities such as recruitment, selection, orientation and language training, counselling, medical examinations, reception, placement and integration assistance.

In addition to its traditional programme, the ICM is frequently called upon when emergency action is required arising from man-made or natural disasters (→ Relief Actions).

Moreover, since initiating in 1964 a "Special Selective Migration Programme", the ICM had arranged by the end of 1981 the recruitment, movement and placement of some 27 000 persons in the skilled and professional categories to and in developing countries, mainly in Latin America. In recent years the ICM has also initiated a "Return of Talent Programme" (reverse "brain-drain" programme) under which nationals of developing countries who have gained educational or work experience in industrialized countries are processed, moved and placed in suitable positions of employment in their own countries or other countries of the region.

During the thirty years of its existence, the ICM has assisted in the movement of around two million refugees and of one million national migrants for permanent resettlement.

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INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION *see* International Maritime Organization

INTERNATIONAL ADMINISTRATIVE UNIONS

1. Notion

The term "international administrative unions" has to be distinguished from international organizations (→ International Organizations, General Aspects) on the one hand and → plurinational administrative institutions on the other. As to how to distinguish international administrative unions from international organizations, no common consensus exists. A distinction can be sought by comparing the functions attributed to the respective institutions: Administrative and technical functions indicating an international administrative union may be juxtaposed against political and military functions characterizing international organizations. Alternatively, a distinction can be found by evaluating the functions of the organs of the institutions in question, with organs exercising executive func-

tions characterizing international administrative unions. In view of the origin of international administrative unions, the latter approach seems the more promising. For example, river commissions and executive bureaus, such as those of the Paris or the Berne Union (see Section 8 *infra*), thus clearly refer to international administrative unions.

However,the organizational pattern of international administrative unions has changed, as is proved best by the → International Telecommunication Union (ITU) and the → Universal Postal Union (UPU). Therefore, it would also seem fit to take into account whether the objective of the organization in question is more technical and administrative than political, military, regulatory or judicial, and whether its aim is economic integration – regardless of its concrete structure. Certainly, it is possible to distinguish broadly between political organizations primarily concerned with the preservation of international peace and administrative unions having more limited functions. However, administrative unions may develop into political organizations or at least assume some political functions. Therefore, the classification is justified not from an accurate legal viewpoint but simply for its convenience for the purposes of presentation.

With respect to the distinction between international administrative unions and plurinational administrative institutions, an essential factor is whether the organization in question is open to all States (e.g. UPU, ITU, → World Intellectual Property Organization) or, even if the membership is limited, whether it fulfils its functions beyond the reach of its members (e.g. most river and → fishery commissions).

International administrative unions originate in the fact that certain resources (e.g. rivers, fish) and certain activities (e.g. international communications) need common international action in order to be administered effectively. Thus, they indicate the development of an institutionalized international administrative law.

The objectives, functions and structure of international administrative unions are highly variable; mutuality exists only in a very broad sense. The most striking factor is that the procedures for issuing technical regulations are very much alike. In so far as an international administrative union has the power to elaborate rules and regulations these supplement, technically speaking, its constitution, whereby such "supplements" enter into force without a ratification similar to the one which is needed to amend the basic constitution (for example: most fisheries commissions, the → International Civil Aviation Organization, the → World Health Organization, and the → World Meteorological Organization (WMO)).

In the following sections a number of the more significant and illustrative examples of international administrative unions will be discussed in greater detail.

2. International River Commissions

International river commissions and similar international agencies have administered, or still administer, rivers such as the → Rhine, → Danube, → Scheldt, Oder, → Elbe, and → Moselle (see also → Rhine-Main-Danube Waterway). These waterways cross or border on the territory of several States or are used by riparian and non-riparian States. From their very nature, navigation, transport and transit, the maintenance and improvement of the waterways, as well as the elaboration of rules and regulations governing traffic and auxiliary facilities, logically become the common concern of the fluvial community of interested States. Accordingly, the purpose and responsibilities of these institutions is to safeguard the observance of the underlying régime (freedom of navigation; → International Régimes), to provide a centre of cooperation in matters concerning navigation, to remove obstacles to traffic, to propose new measures and finally to revise tariffs. As a result of these river commissions working successfully in practice, it has been possible to settle conflicts among the littoral States and between these States on the one hand and the non-riparian users on the other (→ Peaceful Settlement of Disputes). On the whole, these international river administrations were a pre-requisite of the effective use of the waterways, given that they are of multinational concern.

The first international river administration was established for the Rhine. L'Administration générale de l'octroi de navigation du Rhin, which applied only to one section of the river, had primarily fiscal duties, including the collection of tolls and responsibilities for police and general

control. It was succeeded by the Central Commission for the Navigation of the Rhine, formally instituted by the Final Act of the → Vienna Congress (signed June 9, 1815). The Commission was to be an advisory, cooperative organization of the littoral States with general administrative powers. The Central Commission only took up its functions in 1831 when the required *règlement de navigation* was adopted in the Treaty of Mayence (CTS, Vol. 81, p. 307), revised by the Act of Mannheim, 1868 (CTS, Vol. 138, p. 167). During the following period the membership of the Central Commission was enlarged to provide for the participation of non-riparian States. Its functions, too, underwent some changes, without, however, its primary objective being altered.

With respect to the Danube, the Treaty of Paris of 1856 (→ Crimean War and Paris Peace Treaty), proclaiming the Lower Danube open to vessels of all nations, provided for the establishment of two river commissions, the European Commission of the Danube and a riparian commission. The objective of the former was to put the Danube into navigable condition. Though planned merely as a temporary technical agency, the existence of the European Commission was extended after accomplishing its first task. The exercise of navigation on the Lower Danube was placed under its superintendence and it further administered the port of Sulina in so far as shipping and the handling of cargo were concerned (see Public Act of the European Commission of the Danube, 1865, 18 Martens, NRG 144 (1873); see also → Jurisdiction of the European Commission of the Danube (Advisory Opinion)).

Further commissions were created for the rivers Elbe, Scheldt, Po (existing only for 20 years), Oder, Niemen, Upper Danube, Pruth, and more recently for the Niger, Mekong, Moselle and La Plata (→ Niger River Régime; → La Plata Basin). Though the organization and the functions of these commissions varied, their basic concept is similar due to their identical objective. The central element in the organizational structure of all international river commissions is a plenary organ in which all members are represented. All the commissions intend to facilitate the use of the waterways not only by the littoral States but also by non-riparian States. Accordingly, these commissions have to be distinguished from other river commissions, established more recently, which only serve the purpose of coordinating the use of the river by the riparian States which may mostly be characterized as plurinational administrative institutions (for further details see Management of International Water Resources, Institutional and Legal Aspects, Report of the Panel of Experts on the Legal and Institutional Aspects of International Water Resources Development, UN Publ. E.75.II.A.2 (1975)).

3. Fishery Commissions

The fishery commissions, as well as the commissions dealing with marine mammals (→ Seal Fisheries), serve, broadly speaking, to administer fish stocks which are under the jurisdiction or control of two or more States, coordinating the activities of the countries involved (e.g. International Pacific Salmon Fisheries Commission). Alternatively, such commissions regulate the use of fish stocks *vis-à-vis* other users who may hold no special rights with respect to the given stocks (e.g. North Atlantic Fisheries Organization), or they coordinate the activities of several States on the → high seas (International Whaling Commission; → Whaling Régime). In all these cases, the common good requires a joint administration whereby the feature "common good" results from differing causes. Although their organization and functions are dependent on the type of any given commission, all fishery commissions show broad common characteristics notwithstanding their structural and functional variety in detail (for further information see A.W. Koers, International Regulation of Marine Fisheries (1973) and → Fisheries, International Regulation).

Membership in fishery commissions may be open or restricted. If membership is open, four categories may be distinguished: the regional users (countries from the respective region involved in the relevant activities), regional non-users, non-regional users and non-regional non-users (e.g. Israel and Greece, who do no fishing in the Indian Ocean, are nevertheless member States of the Indian Ocean Fishery Commission). A State's impact on the work of the organization and its participation rights may depend on which category the respective State belongs to.

There are various activities associated with in-

ternational fisheries organizations, for example, the promotion of fisheries activities, the collection and compilation of basic data, and even the carrying out of research. Most important is the recommendation of conservation measures. In some cases, the recommendations are binding on member States, either at the time of promulgation, or if no member State objects within a specific time limit, thus, attributing to the commission regulatory or quasi-regulatory powers in technical matters (→ International Legislation). An additional aspect of administering the fishery resources is that of catch allocation. Very few of the commissions have reached the stage of institutional and functional development where they can attempt catch allocation. An exception was provided by the International Commission for the Northwest Atlantic Fisheries. Allocation functions are still carried out by the International Pacific Salmon Fisheries Commission and to a lesser extent by the Inter-American Tropical Tuna Commission. In other commissions (such as the International Commission for South-East Atlantic Fisheries), the catch allocation is to be decided by the members directly in a separate meeting.

Yet another problem is that of enforcement. In the first instance this is the responsibility of each member country with respect to vessels flying its flag. In some of the commissions with limited membership, however, the enforcement has been internationalized. In some of the others a mutual inspection system has been established, which at least gives inspectors the right to report violations to a vessel's flag State.

The institutional framework of the fisheries commissions vary a great deal. However, like the river commissions, they all have in common the central element in the organizational structure of a plenary organ in which all member States are represented.

4. International Commodity Agreements

International commodity agreements are normally aimed at stabilizing the world commodity market; thus they belong to the category of administrative unions which serve a common interest of the States involved (→ Commodities, International Regulation of Production and Trade). At first they were merely intended to achieve an equilibrium between supply and demand. A growing tendency has arisen meanwhile to make use of commodity agreements in order to increase the export earnings of → developing States. Nevertheless, commodity agreements, as far as they include exporters and importers or producers and consumers (market control agreements), must still be seen as serving both groups on the basis of → reciprocity. Under the → Havana Charter, which never came into effect, parity between the two groups of members would have been compulsory whenever commodity agreements involved the regulation of production, the quantitative control of exports or imports, or the regulation of prices. Arrangements also exist solely between producers, serving the interests of this group only.

International commodity agreements are the result of an historical development process, the origin of which lies in the 19th century. In 1864, the first attempt to stabilize the European sugar market failed. A subsequent Sugar Convention of 1902 (CTS, Vol. 191, p. 56), purporting to suppress national subsidization of production and exports, remained in force until 1920. During the years following the world economic crisis, agreements were concluded covering the majority of commodities suited for joint international action. Most important for this further development was the Wheat Agreement of 1933 (LNTS, Vol. 141, p. 71), which institutionalized cooperation between all major exporters and consumers. After World War II the importance of international commodity agreements increased. The techniques employed by the different agreements engaged in market control vary. In the future, the financing of buffer stocks may be provided for by the Common Fund to be set up according to a UN Agreement of June 27, 1980 as soon as its constitution and the necessary agreements between the Common Fund and the International Commodity Organizations (ICOs) enter into force (→ Commodities, Common Fund).

However, the pattern of commodity agreements changed when some arrangements were concluded exclusively among producers. The most successful of these has been the → Organization of Petroleum Exporting Countries, created in 1960. The existing producers' associations have not been vested with substantive powers. They serve merely as a forum of coordination and thus,

for the time being, do not fall under the term "administrative union".

Among the international commodity agreements exists a wide variety of organizational structures. The market control agreements consist of a plenary body normally referred to as the Council. Voting in this organ in which all members are represented is characterized by parity between exporters and importers, or producers and consumers, and by a distribution of votes according to the economic weight of members (→ Weighted Voting). Most of these market control agreements have created an executive organ which administers the functions delegated to it by the Council.

5. *Organizations for International Communications*

(*a*) *Universal Postal Union*

It was in the organization of international communications that the need for joint governmental action was felt first. As postal services were one of the earliest forms of communication, international agreements concentrated on them (→ Postal Communications, International Regulation). For this reason, international agreements dealing with mail, mostly bilateral in nature, were already in existence in the 16th century. During the 19th century, with new means of transport increasing the volume of international mail, the system of bilateral agreements was felt to be inadequate and an international conference met in Berne in 1874 to consider the establishment of a fully international system. The principles adopted in the first International Postal Convention are still valid. To administer the agreement, a permanent international bureau was created in Berne, and in 1878 the UPU received its present name. After the establishment of the → United Nations, the UPU became one of its Specialized Agencies (→ United Nations, Specialized Agencies). However, due to the more technical and non-political functions of the UPU, the relationship was looser than for any of the other agencies. Only in 1964 was the relationship agreement modified and the independence of the UPU abolished. The UPU is supposed to provide for the organization and improvement of the world's postal services. Because of the necessity of providing for the use of modern equipment, the UPU has begun to introduce some standardization of postal services. This also entails technical aid for developing countries (→ Economic and Technical Aid). Thus the functions of the UPU have changed to some extent. The structure of the UPU, which is remarkably similar to that of other Specialized Agencies, consists of a plenary organ, the Congress, and Executive Council and a secretariat (International Bureau).

(*b*) *International Telecommunication Union*

The justification for international cooperation in telegraphy (→ Telecommunications, International Regulation) is self-evident. As soon as telegrams had to be sent across national borders, an agreement about the establishment and interconnection of lines was required. The foundation of an international system was laid at international conferences in Paris (1864) and in Vienna (1868), which resulted in a permanent organization in Berne being set up. In 1947 the ITU was established as a Specialized Agency. The ITU faces growing responsibilities in organizing the world's telecommunications system. One of the most important tasks is the allocation of frequencies, which is accomplished by an autonomous body within the Union, the International Frequency Registration Board, consisting of experts working on a technical, non-political basis. The ITU structure resembles that of the UPU. It consists of a plenary organ (Plenipotentiary Conference), an Administrative Council, the Consultative Committees on telephone and telegraph and the Frequency Registration Board.

(*c*) *International Civil Aviation Organization*

Civil aviation has always been regarded as an activity requiring international joint action to lay down common rules on navigation, safety matters and operational practices (→ Traffic and Transport, International Regulation). In 1919 the International Commission for Air Navigation was created under the direction of the → League of Nations. However, modern development towards an international régime governing civil aviation began with the establishment of the ICAO and the elaboration of relevant rules. The ICAO is engaged in setting up effective meteorological services for aviation, arranging weather stations

and rescue teams in the North Atlantic, mounting a service of radio beacons and, what has to be regarded as its major activity, laying down safety standards for the operation of airlines and → aircraft, including their implementation. The ICAO has as its main organs the Assembly, Council and Secretariat. The most important of the subsidiary bodies is the Air Navigation Body, which is concerned with navigation aids and safety.

(*d*) *Inter-Governmental Maritime Consultative Organization*

Though the need for common rules on navigation was felt as soon as transfrontier sea transport increased, the creation of an appropriate legal régime met some obstacles (→ Maritime Law). In 1897 a non-governmental body, the International Maritime Committee was set up to deal with legal questions relating to shipping. On a governmental level, the Brussels diplomatic conferences met regularly to consider relevant matters. International conventions were drawn up on salvage, bills of lading, etc. In 1909 an International Shipping Federation – an organization of shipowners – was constituted, and the International Hydrographic Bureau was founded to coordinate the work of mapping the oceans (→ Maps). After World War I, the League of Nations established an intergovernmental Committee for Communications and Transit. It was only in 1948 that IMCO, a more effective organization to deal with international shipping, was founded. Considerable differences concerning the form and functions of this organization were present. IMCO has been concerned with increasing safety at sea (→ Safety Rules at Sea) and environmental protection of the sea (→ Marine Environment, Protection and Preservation). It has initiated various conventions in these areas and maintains them under review. The main organs are the Assembly, Council, Marine Safety Committee and Secretariat. In May 1982 its name was changed to → International Maritime Organization.

6. *World Meteorological Organization*

The preceding examples have shown that the establishment of international administrative unions may arise, generally speaking, out of three different origins: the need to administer jointly a resource common to a variety of States (river commissions), the use of a resource by a variety of States, whereby the resource usually falls under the jurisdiction of some but not all of them (most fisheries commissions), the necessity of international joint action resulting from the very nature of the activity concerned (international communications). In the following example, the international cooperation results from the nature of the science concerned, since the first requirement for an efficient meteorological service is information gathered over as wide an area as possible. As in some of the previous examples, international cooperation first developed on a private level. As early as 1853, a conference was held to try to pool and coordinate meteorological information, especially that obtained by ships. Subsequently, more extensive exchanges of information developed among the heads of the meteorological services, and in 1872/1873 a permanent International Meteorological Committee was established, which in 1878 was transformed into the International Meteorological Organization– not an inter-governmental organization like the UPU and the ITU, but an association of various meteorological services.

The transformation of the WMO into an intergovernmental organization took place in 1947, taking effect in 1950. The organization is concerned with extending the scope of the information obtained, increasing its transmission and standardizing the system of measurement. The latter, as in the case of the UPU, resulted in the necessity of giving technical assistance to help developing countries reach the required standards, a necessity which altered the nature of the WMO's work. The main representative body of the WMO is the Congress, which elects the Executive Committee. Unlike the other specialized agencies, the WMO is divided on a partly regional, partly technical basis. The six regional associations coordinate meteorological activities in their respective areas and supervise the implementation of the WMO's policies.

7. *World Health Organization*

The reasons behind the establishment of an international régime dealing with health matters are similar to those in the case of the WMO. The fight against epidemics is only effective if undertaken on a world-wide level (→ Public Health;

International Cooperation). International Sanitary Conferences were held from 1851 onwards; cooperation in the field of health statistics dates from the first International Statistical Congress (1853); and a Pan-American Sanitary Bureau was set up in 1902. In Paris in 1908, an International Health Office was created, with mainly documentary and information functions. The first Health Organisation was established under the League of Nations and was devoted to fighting epidemics. The WHO, created under UN auspices as one of its Specialized Agencies, extended the work already initiated under the League of Nations: the establishment of international biological standards for drugs, the testing of narcotic drugs, the notification of communicable diseases, and the fighting of particular diseases. The organs of the WHO are the Assembly, Executive Board and Secretariat. The WHO is decentralized to a high degree and consists of several regional offices.

8. International Protection of Intellectual Property

The régime for the international protection of intellectual property dates back to 1883 when the International Union for the Protection of Industrial Property was created (Paris Union). Its structure followed the example provided by the ITU and the UPU. The Union thus consisted of a bureau placed under the surveillance of the Swiss Government and a conference in charge of the revision of the basic agreement. It was followed by the creation of an International Union for the Protection of Literary and Artistic Works (1886) (Berne Union) with an equivalent structure. Those two bureaux were brought together in 1893.

In 1967 the → World Intellectual Property Organization (WIPO) was founded as a UN Specialized Agency. Its objective is to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with other international organizations, and to ensure administrative cooperation between the two Unions. The WIPO consists of a General Assembly, in which States members of the WIPO and of either the Paris Union or the Berne Union are entitled to participate, a Conference open to all member States of WIPO, and a Coordination Committee whose members are elected by the Unions. See also → Industrial Property, International Protection, and → Literary and Artistic Works, International Protection.

9. Sea-Bed Authority

The Sea-Bed Authority to be created according to the Draft Convention on the Law of the Sea (UN Doc. A/Conf.62/L.78, August 28, 1981), from the point of view of its functions and structure, clearly belongs to the administrative unions. Art. 157 of the Draft Convention states:

> "The Authority is the organization through which States Parties shall organize and control activities in the Area (which means the exploration for and the exploitation of the resources of the deep sea-bed), particularly with a view to administering the resources of the Area . . .."

These broadly paraphrased functions break down into regulatory powers (the issuance of rules and regulations to govern sea-bed activities), supervisory functions (which entail the right to approve or disapprove activities), enforcement powers (inspection) and the right to carry out deep sea-bed activities (jointly or independently) through its Enterprise (→ Sea-Bed and Subsoil). The establishment of the Sea-Bed Authority has to be seen from the viewpoint that the sea-bed and its resources have been declared the common heritage of mankind on whose behalf the Authority shall act (Arts. 136 and 137(2) of the Draft Convention; → Conferences on the Law of the Sea). It is planned that the Sea-Bed Authority will consist of a plenary organ (Assembly), a Council representing special interests, and the Enterprise as the operational arm of the organization.

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INTERNATIONAL AIR TRANSPORT ASSOCIATION

1. Historical Background

In April 1945 the International Air Transport Association was founded in Havana as a non-governmental trade organization of international airlines. Its headquarters were established in Montreal. On December 18, 1945, IATA was formally established by a special Act of the Canadian Parliament. IATA's predecessor was the International Air Traffic Association, founded in The Hague on August 28, 1919. Like IATA, the Air Traffic Association, together with the inter-governmental Commission Internationale de Navigation Aérienne (CINA), was concerned with standardization in traffic and commercial matters such as the procedures and forms to be used for handling of traffic, the coordination of timetables, and the regulation of rights and responsibilities of passengers and airline operators in order to make air transport safer, cheaper and more convenient (→ Traffic and Transport, International Regulation; → Aircraft Operations). Unlike IATA, however, the International Traffic Association did not deal with fare and rate levels.

At the end of World War II IATA was founded as the direct inheritor of the Air Traffic Association's principles and problems, under the auspices of the → International Civil Aviation Organization. Originally, active membership in IATA was limited to air carriers operating scheduled air services under the flag of a State eligible for membership in ICAO. Since 1974, membership has been open to certain categories of non-scheduled operators, including charter flight operators. Airlines with domestic operations may become associate members. Although membership is entirely voluntary, IATA has received a large degree of acceptance. By December 1980, no less than 89 international operators and 17 domestic carriers participated in the work of the Association. The basic legal instrument regulating IATA's structure, functioning, aims and objectives are the Articles of Association adopted on April 16 to 19, 1945 which have been repeatedly amended at annual general meetings of the Association. According to the Articles of Association, IATA's aims and objectives are the promotion of safe, regular and economical air transport, collaboration among air transport enterprises and cooperation with the ICAO.

2. Structure

The final authority of the Association rests with the annual general meeting composed of representatives of the active members of the Association. The general meeting is responsible for the internal affairs of the Association and deals with such matters as the approval of the budget, the election of officers, the designation of committees and any other business on the agenda for the meeting (e.g. a change in the Articles of Association or recommendations to governments concerning international air transport). At every annual general meeting a president is chosen from among the airline representatives. The execution

and the day-to-day determination of policy is exercised by the Executive Committee consisting of 21 senior executives from airline members of the Association. The Committee decides by a simple majority of all its members. The Executive Committee controls the affairs, funds and property of the Association. It represents the Association, fixes its policy and directs the work of the committees. The Director-General is the chief executive of the Association and reports directly to the Executive Committee. He directs the Secretariat with its head offices (technical matters, administration and finances) in Montreal and its branches (traffic affairs, legal affairs, industrial policy, cooperation with governments) in Geneva and New York. The Enforcement Office, charged with the investigation and prosecution of violations of IATA regulations and binding decisions of traffic conferences, is also under the supervision of the Director-General. When a party is found guilty, a special "Breaches Commissioner", appointed by the Director-General, may notify all other members of his findings and impose a fine or expel the party from IATA.

The Executive Committee is assisted by four Standing Committees: the Technical Committee, the Traffic Committee, the Legal Committee and the Financial Committee. The main task of the Technical Committee is the safety and efficiency of flights, including medical matters. Its activities in particular include operations; the standardization of equipment, communication and radio aids for navigation; meteorology; airworthiness and maintenance matters; aerodromes; air routes; and ground aids. The Legal Committee participates in the development of provisions related to international air transport (→ Air Law). It formulates the views of the Association and brings them to the attention of governments and international organizations. The Legal Committee also studies national legislation, aiming at uniformity in the regulations on air transport matters (→ Unification and Harmonization of Laws). The Financial Committee works towards the standardization of accounting procedures and techniques, and is concerned with insurance and statistical matters. It also deals with the questions of taxation and user charges. Another important area of the Committee's concern is related to airlines' internal accounting. The establishment of the Clearing House in London in 1946 facilitated the world-wide settling of credits and debits between the airlines mainly by means of the account book. The Traffic Advisory Committee concentrates particularly on the preparation of Traffic Conferences by an analysis of operating costs and the standardization of traffic practices. The Committee acts as a steering committee for Traffic Conferences when they are in session. In addition to the Standing Committees, various committees and subcommittees have been established which focus on important technical and legal aspects of civil air transport, such as security, public relations and airport financing. The Industrial Policy Committee is responsible for reviewing future development and for recommending long-term action. Generally speaking, IATA committees may give recommendations and guidance in technical and commercial matters. Only IATA Traffic Conferences, which have a semi-autonomous status within IATA, may decide on binding resolutions, provided they are accepted unanimously.

3. Traffic Conferences

Since no general agreement could be reached at the Chicago Conference of 1944 (→ Chicago Convention) as to the manner in which international fares and rates were to be established, it became one of the main tasks of IATA to devise an inter-airline machinery for this purpose. The Bermuda Agreement between the United States and the United Kingdom, which was followed by many similar agreements between other States, established that fares, rates, and related conditions of air transport were to be agreed between the airlines designated by each party, subject to governmental approval. According to its Articles of Association, IATA may organize member Traffic Conferences. The rate-recommending machinery of IATA Traffic Conferences is mentioned in numerous → air transport agreements, being thereby incorporated into inter-governmental agreements. Originally divided into nine geographic areas, the present pattern is based on three Traffic Conferences covering the American hemisphere (No. 1), Europe, Africa and Middle East (No. 2) and Asia and Australia (No. 3). Each member airline of IATA operating scheduled commercial international air services between two or more points within the area of any Traffic

Conference is to be a voting member of that Conference. Traffic Conferences consider and act on all international traffic matters of concern to their members in their respective areas, such as the analysis of operating costs; the fixing of fares, rates and charges for passengers and cargo; the coordination of timetables and schedules; and the approval of agencies and their administration. Until 1979, membership in at least one of the Traffic Conferences was obligatory for every member. Traffic Conferences have adopted decisions which, in the form of unanimous resolutions, were binding upon members and became effective after approval by their respective governments. In most cases, Traffic Conferences have been able to attain agreement on fares and other conditions of carriage. Only a few governments have rejected resolutions reached at IATA Traffic Conferences. While it has been recognized that, in general, the machinery of IATA Traffic Conferences has been a necessary prerequisite for orderly and efficient international air services, public criticism of and governmental reservations to IATA's tariff structure have increased. IATA has been accused of being a "closed shop" which excludes all competition between airlines. The United States Government, committed to the principle of free trade in international aviation, exhibited growing concern about IATA's Traffic Conferences and threatened to apply antitrust regulations to international aviation affecting the United States (→ Antitrust Law, International). Generally speaking, the United States was in favour of lower rates believing that lower rates would create an expanded market and long-run profitability. European governments wanted to maintain a relatively higher rate level which would result in greater revenues, thereby lightening the burden on their treasuries.

In 1978, the United States Civil Aeronautics Board announced its intention to withdraw its permission for United States flag carriers to participate in IATA's tariff-fixing machinery. IATA reacted by reorganizing its Traffic Conferences. Since October 1979, Traffic Conferences have been split into Conferences dealing on a regional basis with tariff matters, and Conferences deciding on a world-wide basis on matters which facilitate inter-line passenger traffic, such as methods of standardization of way bills, tickets and baggage receipts; booking systems, passenger and cargo handling and automation; scheduling and handling procedures in airports. Membership in the Traffic Conferences is no longer obligatory. If an airline decides to participate in the coordination of tariffs, it is required to vote in those Conferences responsible for the area in which it carries traffic to and from its flag State. An airline carrying traffic only between third States in the Conference area is free to participate as an active member in that Conference. In addition, airlines may decide whether they only want to participate in passenger tariff Conferences or in air freight tariff Conferences as well. Generally speaking, every member airline is free to participate only in those parts of the tariff structure which it considers appropriate to its own commercial needs. Amendments in the voting procedure enacted in 1976 have also introduced a number of safeguards whereby agreements can be prevented if more than a specified number of carriers which are indirectly affected do not want them. If no complete agreement of all carriers can be obtained, it is possible to conclude agreements between a limited number of carriers, provided a majority of the Conference members agree. In the absence of tariffs agreed on by a Traffic Conference (open tariff situation), bilateral air transport agreements generally provide that rates are to be fixed between the designated airlines by mutual agreement after consultation with airlines of third States operating the same line. The basic idea of this provision is to ensure equal conditions to two airlines operating the same services. If the designated airlines fail to agree in fixing the tariffs or if governments refuse to accept those tariffs, it is up to the aeronautical authorities to fix the appropriate tariffs by mutual consultation. According to sample clauses in bilateral agreements, every contracting State may have recourse to → arbitration if it is not possible to reach agreement. Open tariff situations have become more frequent since the United States, supporting the policy of strong competition between airlines, refused permission to United States flag carriers operating air services on the North Atlantic route to participate in the IATA Traffic Conference. In order to avoid international conflicts with States that pursue a different air transport policy, the

United States has developed various rules. According to the "country of origin rule", the country generating the traffic has the final decision on the tariffs which are to be applied for such traffic (e.g. German–American Protocol of November 11, 1978). The "double disapproval rule" means that a tariff must not be applied if it is disapproved by the aeronautical authorities of both sides. The application of both rules, however, is dependent on an agreement between the respective States.

IATA has achieved considerable progress in technical and commercial air transport affairs. The IATA standardized procedures and multilateral agreements have made it possible for a passenger to transfer from one airline to another using a single ticket. Uniformity and standardization, however, reduced competition among airlines. It remains to be seen how IATA in the future will reconcile the public interest in safer, cheaper and more regular air transport with the economic needs of airlines and their governments.

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KAY HAILBRONNER

INTERNATIONAL ASSOCIATION OF LIGHTHOUSE AUTHORITIES

The International Association of Lighthouse Authorities (IALA) is a → non-governmental organization founded in 1955 with the aim "to encourage the continued improvement of aids to navigation, through any appropriate technical means, for the safe and expeditious movement of vessels" (IALA Constitution, Art. 1). The Constitution entered into force in 1957 and has since been amended several times, most recently in November 1980.

A special feature of the IALA relates to its system of membership: Under Art. 3 of the current Constitution, the principal lighthouse authority of any country may become an A member or a B member; associate membership is open to any other service or organization responsible for aids to technical navigation, and to scientific agencies. Moreover, the Constitution distinguishes between industrial members (manufacturers of aids-to-navigation equipment or organizations providing aids-to-navigation services or technical advice under contract) and personal members. The various categories of membership confer different rights and obligations within the Association.

The IALA's organs consist of the General Assembly, the Executive Committee and its Secretariat with headquarters in Paris. The technical work is performed through technical committees drawn from national lighthouse authorities.

The IALA enjoys a consultative status with the → International Maritime Organization. Its membership currently includes around 80 national lighthouse services and a high number of port authorities.

International Association of Lighthouse Authorities, Constitution and General Information.

RUDOLF DOLZER

INTERNATIONAL ATOMIC ENERGY AGENCY

A. Historical Background

The idea of establishing an international agency competent for the peaceful use of nuclear energy (→ Nuclear Energy, Peaceful Use) can be traced to the proposal for an International Atomic Development Authority that constituted the centrepiece of the "Baruch Plan" advanced by the United States at the opening session of the United Nations Atomic Energy Commission in June 1946. That over-ambitious proposal, which would

have created a world monopoly over all peaceful nuclear activities as the only assured means of preventing any diversion for military purposes, immediately became a victim of the Cold War and was in effect abandoned by the end of the decade. However, a residue of negotiating positions remained and later affected the establishment of the International Atomic Energy Agency (IAEA).

The proposal to establish the organization that became the International Atomic Energy Agency was made by United States President Eisenhower in an address to the → United Nations General Assembly on December 8, 1953 (GAOR, 8th session, 470th Plenary Meeting, p. 450). He proposed primarily to neutralize nuclear materials (they were to be deposited by the nuclear powers from their military stockpiles), and secondarily to use those materials to further peaceful nuclear activities throughout the world. Negotiations commenced relatively promptly, proceeding initially in several overlapping fora: 1. Two phases of correspondence between the United States and the Soviet Union, from 1954 to early 1956, culminating in the participation of the latter in the 1956 Working Level Meeting (see below); 2. British/American exchanges from which a draft Statute emerged, which was submitted to a Negotiating Group of eight Western States that met in Washington in 1955 and was expanded in 1956 to include two Eastern European and two → nonaligned States to constitute the Working Level Meeting; 3. Consideration at the world-wide level, first at the ninth session of the UN General Assembly (which also convened the first International Conference on the Peaceful Uses of Atomic Energy in Geneva in 1955), then at the tenth Assembly session and finally at the 1956 Conference on the Statute of the IAEA, which was convened at UN Headquarters by the participants in the Working Level Meeting to consider the draft Statute they had prepared.

The Conference, which completed its work on October 26, 1956, also established a Preparatory Commission that functioned for just under a year until it was supplanted by the first Board of Governors of the new Agency.

B. Structure

1. Statute

The Statute of the IAEA is a multilateral treaty (UNTS, Vol. 276, p. 4) opened for signature from October 26, 1956 to January 23, 1957, which entered into force on July 29, 1957 (→ Treaties, Multilateral). As the constitution of the Agency, it specifies its objectives and functions, defines its membership, establishes three principal organs, prescribes in some detail its intended main activities, and makes provisions concerning finances, privileges and immunities, relationship with other organizations, and the settlement of disputes (→ International Organizations, General Aspects). Amendments to it entered into force in 1963 and 1973, both making changes in the composition of the Board of Governors.

2. Membership

The "initial members" of the IAEA are those States invited to the Conference on the Statute that signed and ratified that instrument. Other members, whose status does not differ from that of the initial ones, are the States that accept the Statute after having been admitted by the General Conference on the recommendation of the Board. Although the privileges and rights of members that persistently violate the Statute or agreements concluded pursuant to it may be suspended, expulsion is not provided for. Members may withdraw, though they remain bound by contractual obligations with the Agency and liable for assessed contributions to the current budget.

Seventy-nine States became initial members and thirty-two others were admitted later; two initial members withdrew but one was later readmitted, making a current total of 110 members (listed in IAEA Doc. INFCIRC/2, 1977 revision; see INFCIRC/42 for further details).

3. Organs

(a) General Conference

The General Conference is the general representative organ, consisting of all members. It annually holds a regular session lasting five to ten days, mostly in the headquarters city, Vienna. Special sessions are possible, but only one has been held, to start up the Agency.

Although the Conference enjoys the prestige of being the senior principal organ, its actual functions and powers are slight. Its only significant independent powers are to elect some members of the Board, to adopt the scale of assessments and

to propose statutory amendments for adoption by the membership; in conjunction with the Board, it elects members and approves the appointment of the Director General, the budget, certain administrative rules, and relationships with and reports to other international organizations.

The decisions of the Conference are for the most part taken by simple majority, though a two-thirds majority is required on any financial question, on proposed statutory amendments, on the suspension of the privileges and rights of a member and on certain procedural questions.

(*b*) *Board of Governors*

The unamended Statute provided for an intricately composed Board of Governors, 13 of whose 23 members were annually co-opted by the previous Board, under four separate sub-categories defining various peaceful nuclear accomplishments, while the remaining ten were elected for two-year terms by the General Conference under two sub-categories designed to assure representativeness. As a result of two amendments of the Statute, the Board at present consists of 34 members, of which twelve are co-opted by the Board under two sub-categories, and 22 are elected by the Conference according to a formula distributing seats among seven geographical areas and two combinations of areas. Since 1977, proposals for a further increase in elected members have been considered.

The Board has general authority to carry out the functions of the Agency. It can thus make all policy decisions and approve necessary instruments, except on the relatively few matters assigned solely to the Conference, those on which it has to act in accord with the Conference and those that it itself refers to the Conference.

To carry out its responsibilities, the Board's Rules of Procedure (IAEA Doc. GOV/INF/60) provide that it shall be so organized as to enable it to function continuously. In its early years it annually held a series of multi-week sessions, but as better understandings were developed among Board members and with the Secretariat, the annual rate has become four to five sessions of at most a few days. In addition, over 20 committees have been established, mostly in the early years, of which only two (Technical Assistance; Administrative and Budgetary), both now open to all Board members, still meet each year.

Votes in the Board, which nowadays are rare, require a simple majority, except that two thirds is required to set the amount of the budget, to appoint the Director General and to decide certain procedural questions.

(*c*) *Secretariat: Director General and staff*

The third principal organ is the staff, headed by the Director General, who is appointed by the Board with the approval of the Conference for a four-year term and serves as chief administrative officer under the authority and subject to the control of the Board, performing his duties in accordance with regulations adopted by it. The first Director General served a single term; the second served five terms, the third was appointed in 1981.

Under the Statute and various regulations adopted by the Board (especially the staff and financial regulations) the Director General has the normal functions of administering the staff and the finances; he also prepares the initial estimates for the annual budget, with which he later implements the programme, and he maintains all the external contacts of the Agency, with States, other organizations and persons. He is supported by a Secretariat structured into five departments, each headed by a Deputy Director General and divided into several Divisions or other units (such as laboratories). The terms of service of the staff, currently about 1400 in number, are determined in accordance with the UN common system of staff administration, except that the Agency no longer gives career appointments. The Agency participates in all the joint organs related to that system, such as the International Civil Service Commission (→ Civil Service, International), the UN Joint Staff Pension Fund, the → United Nations Administrative Tribunal and the → International Labour Organisation Administrative Tribunal.

(*d*) *Other organs*

A number of non-statutory advisory organs have been established, the oldest and most important being the 15-person Scientific Advisory Committee. A number of joint organs supervise various research activities that are carried out

under agreements with States and with other organizations.

4. Finances

The Statute provides for a dual budget, drafted in the first instance by the Director General, on the basis of which the Board prepares its proposals that must either be approved by the Conference or returned to the Board for revision. The "regular budget" is financed from assessments imposed on the members according to a scale adopted by the Conference, under which the administrative costs are distributed in about the same proportion as in the UN and the safeguards costs are divided using a similar formula but adjusted so as to maintain the shares of → developing States at about the 1971 levels (i.e. the levels existing before the implementation of the Non-Proliferation Treaty). The "operational budget", which now is used solely to finance the principal part of the technical assistance programme but originally also covered certain research activities, is financed from voluntary cash contributions. Certain extra-budgetary activities (mainly additional technical assistance and special research projects) are financed from restricted contributions from members and from other organizations, in particular the → United Nations Development Programme.

The financial arrangements of the Agency are harmonized with those of the UN and most of the → United Nations Specialized Agencies, in part in compliance with recommendations of the UN General Assembly and the → United Nations Economic and Social Council (ECOSOC), by relying on certain UN organs and by participating in joint ones (such as the Panel of External Auditors and the Joint Inspection Unit).

5. Relationships

Largely for historical reasons reflecting early conflicts about the proposed International Atomic Development Authority (see Section A *supra*) and negotiations on the Statute, as well as to facilitate direct reports by the IAEA to the UN General Assembly and, in appropriate cases (i.e. if safeguards obligations are violated), to the → United Nations Security Council, the Agency did not become a UN Specialized Agency, but occupies a unique niche among a miscellaneous group of other related agencies. Thus its Relationship Agreement (UNTS, Vol. 281, p. 369) with the UN, which is substantively similar to those of most of the specialized agencies, was concluded directly with the General Assembly rather than with ECOSOC. However, it voluntarily also reports to the Council and, for most purposes, is indeed treated as a specialized agency and participates with them in numerous organs designed to coordinate and harmonize the activities of the UN system.

The IAEA has also concluded Relationship Agreements (IAEA Doc. INFCIRC/20 and /Add.1) with seven specialized agencies and Cooperation Agreements (INFCIRC/25 and /Add.2-5) with seven regional inter-governmental organizations; it has granted consultative status to eighteen international → non-governmental organizations and to one national one. All these organizations are automatically invited to attend IAEA General Conference sessions, and additional ones are invited by the Board on an *ad hoc* basis. The Agency maintains with the → Food and Agriculture Organization a joint Division on Atomic Energy in Food and Agriculture, jointly operates with the → United Nations Educational, Scientific and Cultural Organization the International Centre for Theoretical Physics (Trieste), and carries out other activities with the participation of one or more organizations.

C. Activities

The Statute foresees as one of the IAEA's principal activities the receipt, storage and distribution of nuclear materials coming from members. Initially, token agreements for this purpose were concluded with the three States with the largest nuclear programmes (INFCIRC/5 and /Mod.1), but these have neither been fully utilized nor followed by more substantive agreements.

Another potential activity emphasized in the Statute are "Agency projects", i.e. peaceful nuclear energy activities to be carried out by members with the assistance of the Agency – especially by supplying nuclear materials deposited with it. Although the supply of some small reactors and/or the fuel therefor has indeed been arranged by securing these items on an *ad hoc* basis from one or more supplying States, the IAEA has mostly acted as a mere *pro forma*

intermediary. As little purpose was normally served by this formal role, more recently it has largely been abandoned, leaving it for the States concerned to make the necessary commercial and technical transactions on a bilateral basis, with the Agency merely undertaking to carry out control functions, in particular safeguards.

The Statute requires the IAEA to "safeguard" the use of nuclear facilities and materials supplied for Agency projects in order to inhibit their diversion to military ends (→ International Controls; → Nuclear Warfare and Weapons), and allows the Agency to do so also in respect of other such activities at the request of the State(s) concerned. To carry out this function, the Agency has established a safeguards programme as one of its major activities, under which it applies controls to all Agency projects, to numerous nuclear activities carried out in one State with the bilateral assistance of another, to some facilities submitted unilaterally and, most importantly, to all peaceful nuclear activities (so-called "full-scope safeguards") of parties to the 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America (the so-called Treaty of Tlatelolco) and to the non-nuclear-weapon States parties to the 1968 → Non-Proliferation Treaty. The control measures consist of reviewing the design of controlled facilities, checking records and reports, carrying out inspections and installing technical devices (seals, monitors) to prevent the clandestine removal of controlled items. All these measures are based on safeguards agreements between the Agency and each controlled State, specifying in broad outline the controls that may be carried out but leaving implementation, within specified limits, to the Agency. The most drastic and effective control measures are inspections, which are carried out by Agency officials, designated with the consent of the inspected State but visiting at times selected by the Agency – sometimes without notice and sometimes even on a permanent basis if so required by the nature of a facility. If any inspector should detect a diversion or be prevented from carrying out his controls, a report must be made to the Board, which may impose → sanctions (such as an → embargo on further nuclear assistance or even the withdrawal of items already internationally supplied) and inform the General Assembly and Security Council.

A somewhat analogous statutory function is the establishment of standards of safety for protection of health and minimization of danger to life and property, and the application of these standards to IAEA operations as well as to national ones it assists or that are submitted on a voluntary basis. The Agency has promulgated (and revised and repromulgated) numerous standards, often in collaboration with other international organizations (e.g. the ILO). While many of these have gained a large measure of international and national acceptance, the Agency has made only minimal attempts to supervise their application to national activities.

Though not foreseen in the Statute, the Agency has been instrumental in formulating several multilateral treaties: the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships (IAEA Legal Series No. 4, p. 34; → Nuclear Ships); the 1963 Vienna Convention on Civil Liability for Nuclear Damage (ibid., p. 3); the 1963 Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents (UNTS, Vol. 525, p. 75); the 1971 Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (IAEA Legal Series No. 4, p. 55); and the 1979 Convention on the Physical Protection of Nuclear Materials (INFCIRC/274/Rev.1).

A principal activity of the Agency has been the supply of technical assistance, mainly in the form of grants of fellowships, and the supply of experts and equipment (→ Economic and Technical Aid). This assistance is furnished in part from unrestricted voluntary contributions to the operational budget, from gifts in kind to the Agency, from restricted voluntary contributions for particular projects, and from the UN Development Programme. Regular budget resources from assessed contributions are used only to meet administrative costs.

The IAEA carries out a modest research programme (→ Nuclear Research), mainly in its laboratory close to headquarters, in its Monaco laboratory (now co-financed by UNESCO and the → United Nations Environment Programme) and in the Centre for Theoretical Physics in Trieste (co-financed by UNESCO). Other research is performed under research and technical contracts financed by the Agency. Research is also carried

out by means of joint projects among and with members, wherein the Agency plays various roles as coordinator, stimulator or supplier of some assistance.

Finally, the Agency is a major distributor of scientific and technical information, in part through sponsoring numerous meetings (conferences, symposia, seminars), in part through an extensive publication programme and finally through the International Nuclear Information System (in cooperation with the → European Atomic Energy Community).

D. Special Legal Problems

The Agency's special status within the UN system was from the beginning a source of much confusion and still causes difficulties and uncertainties, because many provisions of the → United Nations Charter, of resolutions, of certain treaties and even of some national legislation, refer to "specialized agencies" and thus their application to the IAEA is in doubt. For example, the agency could not come under the Convention on the Privileges and Immunities of the Specialized Agencies (UNTS, Vol. 33, p. 262), and therefore had to promulgate s separate agreement in this field (UNTS, Vol. 374, p. 147; → International Organizations, Privileges and Immunities). Uncertainty also persists as to the validity of the General Assembly's authorization for the IAEA to request advisory opinions from the → International Court of Justice under UN Charter Art. 96(2) (→ Advisory Opinions of International Courts).

The Agency's control activities, especially safeguards, make it the only international organization that attempts to monitor, within a State, the latter's compliance with a treaty obligation. Although the State must consent to these controls and to certain details as to their implementation, the IAEA retains substantial discretion as to the specific surveillance measures it carries out.

The complex formulae specifying the composition of the Board of Governors, already twice amended, have led to several questions; though basically of a political nature (such as the exclusion of South Africa from the Board), they also have legal dimensions. Because of the need for the Board and the Conference to concur on certain questions, in particular the budget, stalemates could arise between these principal organs, for which no means of resolution is contained in the Statute; so far, these organs have worked harmoniously.

E. Evaluation

As has been true of the UN itself, the actual activities of the IAEA have departed significantly from those foreseen in its Statute. In particular, the detailed provisions for the Agency's receipt, storage and distribution of nuclear materials have remained practically inoperative, and those concerning "Agency projects" are, after a modest start, also largely being permitted to lapse. Safeguards, important in the Statute as an adjunct to projects, do constitute an ever more significant activity, but on a completely different basis: the implementation of independent non-proliferation régimes, such as the Non-Proliferation Treaty. The other control function, that relating to health and safety, has been treated largely as a norm-setting task (→ International Legislation), albeit an important one. On the other hand, technical assistance, which is only adverted to in the Statute, has, under the pressure of the developing States, become the largest budget item.

The overall fortunes of the Agency reflect less the results of its own efforts than the general vicissitudes of the nuclear industry. First, the initial enthusiasm of the mid-1950s, to which the Agency owed its rapid establishment, faded with the recognition that nuclear power was more complicated and expensive than that generated by cheap hydrocarbons. Then the rising costs of the latter coincided with increased concerns about the environmental and military dangers of large-scale nuclear facilites. Although these concerns were ones that the Agency's two control functions could address and through which the latter even gained significance and a measure of public recognition, it has naturally not been possible for the Agency to rise above the general malaise of the industry to which its fortunes are so closely tied. Its task must therefore be to help sanitize that industry, an assignment requiring both an accentuation and a delicate coordination of its potentially conflicting promotional and control functions.

Statute of the International Atomic Energy Agency, UNTS, Vol. 276 (1957) 4–125.

Agreements Registered with the International Atomic Energy Agency, IAEA Legal Series No. 3 (8th ed. 1981).

International Conventions on Civil Liability for Nuclear Damage, IAEA Legal Series No. 4 (Rev. ed. 1976) (STI/PUB/430).

The texts of most significant instruments (including treaties) relating to the IAEA are set out in its INFCIRC series, the current numbers of which are listed in the latest revision of INFCIRC/1.

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P.C. SZASZ, The Law and Practices of the International Atomic Energy Agency, IAEA Legal Series No. 7 (1970) (STI/PUB/250).

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PAUL C. SZASZ

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

1. Establishment

The International Bank for Reconstruction and Development (IBRD) was established, together with the → International Monetary Fund (IMF), at the → Bretton Woods Conference in July 1944 (UNTS, Vol. 2, p. 134). Its Articles of Agreement entered into force on December 27, 1945. (Unless indicated otherwise, articles cited here refer to these Articles.) They were amended once, in 1965, to permit the IBRD to lend to the → International Finance Corporation (IFC) (UNTS, Vol. 606, p. 294). The IBRD opened for business on June 25, 1946. In 1947, it became a → United Nations Specialized Agency. Its principal office is located in the territory of the biggest shareholder (Art. V(9)) – the United States – in Washington, D.C. The IBRD also has resident missions in 32 other locations.

The IBRD, together with the → International Development Association (IDA) and the IFC, is a part of the so-called World Bank Group. Affiliated with the World Bank Group is the International Centre for Settlement of Investment Disputes (→ Investment Disputes, Convention and International Centre for the Settlement of). The IBRD lends only for specific projects to member governments or to any business, industrial and agricultural enterprise with a government guarantee at appropriate rates of interest, while the IFC provides venture capital without government guarantees for productive private enterprises, and the IDA is a source of concessionary financing for specific projects to member governments and also to private enterprises with suitable government guarantees.

2. Purposes

The purposes of the IBRD, set forth in detail in Art. 1, are to assist in the reconstruction and development of territories of members; to promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors and, under certain circumstances, to provide finance for productive purposes; to promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments; to arrange its lending policies to give priority to the more useful and urgent projects; and to conduct its operations with due regard to the effect of international investment on business conditions in the territories of members.

In the IBRD's earlier years, its major calling was to assist member countries in the reconstruction of their economies after World War II. Although it may be, and still occasionally is, called upon to assist in reconstruction, its major task at present is to assist its developing country members in raising the standard of living of their populations. Only economic considerations may be deemed relevant in the decisions of the IBRD and its officers (Art. IV(10)). This does not mean, however, that the IBRD may not take into account the economic consequences of political behaviour.

3. Membership and Voting

Membership of the IBRD is open to all member countries of the IMF. As of June 30, 1982, there were 142 members of the IBRD. Each member has 250 votes plus one additional vote for each share of stock subscribed to. Each share has a par value of $100 000 (Art. II(2) (a)). Except as otherwise provided, all matters before the IBRD

are decided by a majority of the votes cast (Art. V(3)). As of June 30, 1982, the number of votes held by the largest shareholder, the United States, was 88 759 (20.01 per cent of the total).

The representation of China, an original member of the IBRD, was changed effective May 15, 1980, and since that date has been assumed by the People's Republic of China (for the documents relating to this change, see ILM, Vol. 20 (1981) p. 774). On July 7, 1982, Hungary signed the IBRD Articles of Agreement, thereby attaining membership. The Soviet Union, although represented at the Bretton Woods Conference, did not join the IBRD.

The rights and obligations of the IBRD and of its members are governed by the Articles of Agreement; the relationship is thus one of international law. On accepting membership, countries are required to state under Art. XI(2) (a) that they have taken all steps necessary to enable them to carry out all of their obligations under the Articles. This is particularly important in respect of members' financial obligations. The IBRD may impose, and has imposed, as a condition of admission to membership or the acceptance of additional subscriptions to the IBRD's capital, that the member concerned furnish satisfactory evidence that this requirement has been met. In no case may a member plead the lack of adequate authority under domestic law to excuse a failure to carry out obligations by which it is bound under international law.

Art. VI stipulates elaborate provisions in regard to withdrawal or suspension of members. Only two countries, Poland and Czechoslovakia, have withdrawn as members, in 1950 and 1955 respectively. Art. VIII and Art. IX of the IBRD's Articles of Agreement include provisions regarding amendments to and the interpretation of the Articles of Agreement (→ Interpretation in International Law). Art. IX provides that any question of the Articles' interpretation – not necessarily a dispute – arising between any member and the IBRD or between any members shall be submitted to the Executive Directors for their decision, with the possibility of an appeal to the Board of Governors whose decision is final. In case of a disagreement between the IBRD and a country which has ceased to be a member, the matter is to be submitted to *ad hoc* → arbitration.

4. Organization; Management

The IBRD has a Board of Governors, Executive Directors, a President and staff (Art. V(1)). All the powers of the IBRD are vested in the Board of Governors consisting of one Governor and one alternate appointed by each member in such manner as it determines. Each Governor and each alternate serve for five years, subject to the pleasure of the member appointing that person, and may be reappointed. The Board selects one of the Governors as Chairman.

The Board of Governors holds an annual meeting, and such other meetings as may be provided for by the Board or called by the Directors whenever requested by five members or by members having one-quarter of the total voting power. A quorum for any meeting of the Board of Governors is a majority of the Governors, exercising not less than two-thirds of the total voting power.

The Board of Governors may, and has established a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Bank, may obtain a vote of the Governors on a specific question without calling a meeting of the Board.

With the exception of certain important powers specifically reserved to them by the Articles of Agreement (Art. V(2)) the Governors of the IBRD have delegated their powers for the conduct of the general operations of the Bank to the Board of Executive Directors that performs its duties on a full-time basis at the Bank's principal office. There are twenty-one Directors, who need not be Governors. Five Directors are appointed, one each by the five members having the largest number of shares, and sixteen are elected by all the Governors other than those appointed by the five appointed members (Art. V(4) as amended by the Board of Governors). The Executive Directors fulfil dual responsibilities. They represent their constituents' interests and conerns to the Board and management when determining policy or considering individual projects, as well as the interests and concerns of the Bank to the country or countries that appointed or elected them.

Policy is decided by the Executive Directors within the framework of the Articles of Agreement. The Directors consider and decide on

all IBRD loan proposals made by the President. They are also responsible for presentation to the Board of Governors at its Annual Meetings of an audit of accounts, an administrative budget, the Annual Report on the operations and policies of the IBRD, and any other matter that, in their judgment, requires submission to the Board of Governors.

Policy decisions that the Executive Directors make annually, or more frequently as necessary, include those that concern the IBRD's lending rate, allocation of its net income, staff compensation, administrative budgets, and research programme.

The Executive Directors select a President, whose term of office is normally five years. The President has no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but does not vote at such meetings. The President is the chief of the operating staff of the IBRD and conducts, under the direction of the Executive Directors, the ordinary business of the IBRD. Subject to the general control of the Executive Directors, he is responsible for staff matters. Under Art. V(5) (c):

> "The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties."

Each member deals with the IBRD only through its treasury, central bank, stabilization fund or other similar agency, and the IBRD deals with member countries only through the same channels (Art. III(2)).

In appointing the officers and staff of the IBRD, the President must, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible (Art. V(5)(d)). At June 30, 1982, total staff of the IBRD numbered 5278. Of these 2689 were higher level staff representing 104 nationalities.

5. Capital Stock; Borrowing

The IBRD's Articles of Agreement express its capital stock in US dollars of the weight and fineness in effect on July 1, 1944 (1944 dollars). Until 1971, the current US dollar had the same value as the 1944 dollar and the Special Drawing Right (SDR), which was instituted in 1969. Thereafter, a series of complex arrangements prevailed. From 1973 until March 31, 1978, the Bank's capital stock, which is expressed in the Bank's Articles of Agreement in terms of "United States dollars of the weight and fineness in effect on July 1, 1944" (1944 dollars), was translated by the Bank for purposes of its financial statements into current United States dollars at the rate of $1.20635 per 1944 dollar. Since the effectiveness on April 1, 1978, of the Second Amendment to the Articles of Agreement of the International Monetary Fund (the Fund), currencies no longer have par values in terms of gold. The Bank is examining the implications of this change on the valuation of its capital stock. No decisions on this matter have been taken. However, for purposes of the financial statements since June 30, 1978, the Bank has expressed the value of its capital stock on the basis of the SDR in terms of United States dollars as computed by the Fund, $1.09224 per SDR on June 30, 1982 ($1.15060 per SDR on June 30, 1981). So expressed, the capital stock of the Bank stood, as of June 30, 1982, at $43 164 670 000, of which $4 105 299 000 represents paid-in capital stock, the balance being made up of authorized and subscribed stock. For the time being payments on account of subscriptions will continue to be accepted at the equivalent of $120,635 per share.

The authorized capital stock of the IBRD may be increased, according to Art. II(2)(b) of the IBRD's Articles of Agreement, by a three-fourth majority of the total voting power. On January 4, 1980 the IBRD's Board of Governors adopted a resolution that increased the authorized stock of the IBRD by 331,500 shares, representing an increase of about $40,000 million, 7.5 per cent of which was to be paid in, of which 0.75 per cent was to be in gold or US dollars and 6.75 per cent in members' national currencies. At the same time, the IBRD's Board of Governors adopted a resolution that increased the authorized capital stock by an additional 33,500 shares, representing a further increase of about $4,000 million, authorizing each member country to subscribe to 250 shares of such additional capital

stock, none of which will be paid in. Payments on account of the callable portion of each share may be made at the option of the member either in US dollars or in the currency required to discharge the obligations of the IBRD for the purpose for which the call was made (IBRD Articles of Agreement, Art. II(5), (7) and (9); Art. IV(2)(a)). Member countries are, in accordance with Art. II(6) of the IBRD's Articles of Agreement, liable for and limited in their liability to the portion of their shares not paid in. Calls can be made to the shareholders only when required to meet obligations of the IBRD for funds borrowed or on any loans which might be guaranteed by it, and in accordance with procedures set forth in Art. II(5) and (7) of the IBRD's Articles of Agreement. Calls on unpaid subscriptions are required to be uniform, but the obligations of the members of the IBRD to make payment on calls are independent of each other. A failure of one or more members to make payment on such a call would not excuse any other member from its obligation to make payment.

The IBRD's basic capital structure reflects a conception of the IBRD as a financial intermediary, operating principally by relending funds raised by it in the market or by guaranteeing loans made to members through the commercial investment channels, while loans made by it out of its capital funds constitute a smaller part of its activities. Its callable capital constitutes backing for the IBRD's obligations additional to that provided by the IBRD's loan portfolio and liquid assets. While members' obligations with respect to the callable portion of their shares run to the IBRD and not to creditors, the latter are protected by the fact that no calls may be made by the IBRD on this portion for any purpose other than meeting obligations arising out of borrowings and guarantees and that, if a call is necessary to meet such obligations, the IBRD has a duty to make such a call. No such call has yet been made.

The IBRD's borrowings against subscribed but not paid-in capital stock in international capital markets constitute therefore a major source of funds for financing its operations. The IBRD requires consent for borrowing operations of the member in whose markets the funds are raised and of the member in whose currency the loan is denominated (Art. IV(1) (b)). Members must agree that the proceeds may be freely exchanged for any other member's currency.

It is the policy of the IBRD to maintain liquid holdings at any given time equal to a minimum of 40 per cent of estimated borrowings for the subsequent three years. On June 30, 1982, liquid assets amounted to $9394 million net of commitments for settlements and such collateral received on loaned securities, an increase of $1023 million over fiscal 1981. All debt instruments of the IBRD evidence direct general obligations of the IBRD and none of them contain restrictions on the amount of debt which the IBRD may incur or have outstanding. The obligations are not secured by a pledge of specific assets but most of them contain a negative pledge (*pari passu*) covenant. Most of the IBRD's debt instruments contain provisions with respect to both applicable law and jurisdiction. Normally they stipulate the law of the country in whose currency the obligations are expressed. The instruments usually also provide expressly for the jurisdiction of the courts of that country.

6. Resources; Operational Policies

The IBRD's resources and facilities are to be used exclusively for the benefit of member countries (Art. III(1) (a)). According to Art. III(4), the IBRD may guarantee, participate in, or make loans to any member country or any political sub-division thereof and any business, industrial, and agricultural enterprise in the territories of a member country, subject, *inter alia*, to the following conditions: (a) when the member country in whose territory the project is located is not itself the borrower, the member fully guarantees the repayment, the interest and other charges on the loan; (b) the IBRD must be satisfied that the borrower would be unable otherwise to obtain the loan under conditions which in IBRD's opinion are reasonable for the borrower; (c) in guaranteeing a loan made by other investors the IBRD should receive suitable compensation for its risk; (d) loans made or guaranteed by the IBRD should, except in special circumstances, be for the purpose of specific projects of reconstruction or development.

The total amount outstanding of guarantees, participations in loans and direct loans made by the IBRD may not, under Art. III(3), at any time exceed 100 per cent of the unimpaired subscribed capital, reserves and surplus of the Bank.

The IBRD sees to it that, in accordance with Art. III(5) (b) and (c), the proceeds of any loan are made and used only for the purposes for which the loan was granted, with due attention to considerations of efficiency and without regard to political or non-economical influences or considerations. The loan amount is not handed over to the borrower. Rather, an account is opened in its name and the borrower is permitted to draw on this account only to meet project expenses as they are actually incurred.

The IBRD may not, under Art. III(5) (a) of its Articles of Agreement, impose conditions that the proceeds of a loan be spent in the territories of any particular member or members. The IBRD normally requires its borrowers to submit to international competitive bidding (ICB) for works or goods financed by the IBRD under a project, unless the use of ICB would be deemed inappropriate by the IBRD; the Guidelines for Procurement under World Bank Loans and IDA Credits are incorporated into the lending agreements together with appropriate modifications.

Loans are generated from a project generating cycle. The prospective borrower and the IBRD identify possible investment projects to be financed by IBRD loans. The IBRD then sends specialist teams in the field to appraise, with the borrower, the investment project. Through such appraisal, the project's viability in economic, financial and social terms is established. During execution, the IBRD supervises the progress of the investment project closely. After its completion, a special department of the IBRD re-evaluates and audits the project, its execution, and the performance of the borrower and the IBRD. Such audit report is then used in the scrutiny of new projects identified and appraised.

During fiscal year 1982, operations totalled 150 spread over 43 countries. The IBRD disbursed $6326 million, up from $5063 million in fiscal 1981. Loans approved by the IBRD since 1947 total $78479.9 million (exclusive of loans to the IFC).

Co-financing with public and private lenders is an increasingly important factor in IBRD lending operations. Co-financing with bilateral and multilateral official lenders ($2103 million in fiscal 1982) and export credit institutions ($2069 million for 26 IBRD operations in fiscal 1982) accounts for the majority of such operations. In recent years the IBRD has made, however, a special effort to promote co-financing with commercial banks.

While the IBRD and IDA have traditionally financed all kinds of capital infrastructure works, such as roads and railways, telecommunications, and ports and power facilities, their more recent development strategy places an increased emphasis on investments that can directly affect the well-being of the masses of poor people of → developing States by integrating them as active partners in the development process (→ International Law of Development). This strategy is evident in the IBRD-financed projects for agriculture and rural development, education, family planning (→ World Population), nutrition, water and sewerage facilities, as well as "core" low-cost housing, and for increasing the productivity of small industries. At the same time, lending for "traditional" projects continues, and is being redirected, to be more responsive to the new strategy of deliberately focusing on the poorest segments of society in the developing countries.

7. Legal Instruments of Loans

The instruments used in connection with the IBRD's loan transactions are (a) a loan agreement with the borrower and, if the borrower is not the member in whose territory the project is located, a guarantee agreement with that member, (b) the IBRD's General Conditions Applicable to Loan and Guarantee Agreements to the extent, and subject to modifications, if any, agreed upon for the purposes of the particular loan and/or guarantee agreement, and (c) a project agreement with an entity which is not itself the borrower.

The Bank is governed by international law, and has from the start taken the position that its loan and guarantee agreements create rights and obligations under international law. Consequently, they are registered with the → United Nations Secretary-General pursuant to Art. 102 of the → United Nations Charter and the regulations of

the → United Nations General Assembly issued thereunder (→ Treaties, Registration and Publication). In language substantially unchanged since 1947 the IBRD's General Conditions provide in Section 10.01 that:

> "The rights and obligations of the Bank, the Borrower and the Guarantor under the Loan Agreement and the Guarantee Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State, or political subdivision thereof, to the contrary."

Controversies under loan and guarantee agreements are to be submitted, in accordance with the IBRD's General Conditions, Section 10.04, to → arbitration, to the exclusion of any other remedy. The parties will be the Bank on the one side and the borrower (and guarantor, if any) on the other. Each side appoints one arbitrator and the third arbitrator, referred to as Umpire, is to be appointed by agreement of the parties or, if they do not agree, by the President of the → International Court of Justice or, failing appointment by him, by the UN Secretary-General. In case of disagreement between the borrower and the guarantor concerning the appointment of an arbitrator, the guarantor makes the appointment. In case of failure of one of the sides to appoint an arbitrator, the latter will be appointed by the Umpire. These and other provisions for the constitution of the tribunal and a further provision permitting awards to be rendered by default guard against frustration of the arbitral undertaking.

All decisions of the tribunal are to be by majority vote and are final and binding. In case the award is not complied with within 30 days, any party may seek to enforce it in any court of competent jurisdiction or pursue any other appropriate remedy, subject to the qualification of Section 10.04(k) of the General Conditions. The effect of this qualification is that the arbitration provisions are not to be considered as a → waiver of sovereign immunity by member governments but that they permit enforcement where such enforcement is possible under the law of the forum (→ State Immunity). On the other hand, Section 10.04(k) does constitute a waiver by the IBRD of its jurisdictional immunity from action by members. The arbitration provisions in the IBRD's more than 2600 lending agreements have never been invoked.

8. Privileges and Immunities

To enable the IBRD to fulfil its functions, it was granted a certain status and certain privileges and immunities, set forth in Art. VII of its Articles of Agreement (→ International Organizations, Privileges and Immunities). The IBRD possesses full juridical personality, and, in particular, the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings. The IBRD's international juridical personality (→ Subjects of International Law) was explicitly recognized by Switzerland, not a member of the IBRD, in an agreement regarding its status, privileges and immunities in Switzerland (UNTS, Vol. 216, p. 348).

The IBRD has no absolute immunity from suit. Actions may, however, be brought against the IBRD only in a court of competent jurisdiction in the territory of a member in which the IBRD has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. This provision of Art. VII(3) means that the IBRD would not be immune from suit in regard to securities it has issued, which acts to guarantee the IBRD's access to capital markets. The immunity of the IBRD from suit (or, in the matter of IBRD securities, the lack thereof) is thus functional rather than absolute, but nevertheless effective in all areas other than that of the IBRD-issued securities.

In order to deal with grievances of IBRD employees against the IBRD and related to their employment or pension rights, the IBRD created, on April 30, 1980, the → World Bank Administrative Tribunal.

No actions may be brought by IBRD members or persons acting for or deriving claims from members. The property and assets of the IBRD are to be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the IBRD. Its property and assets are to be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative actions; they are also immune from taxation and custom duties. The archives of the IBRD are inviolable.

All Governors, Executive Directors, alternates, officers and employees of the IBRD, who enjoy certain privileges and immunities, are not subject to legal process with respect to acts performed in their official capacity except when the IBRD waives this immunity (→ Civil Service, International).

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HERIBERT GOLSONG

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, ADMINISTRATIVE TRIBUNAL *see* World Bank Administrative Tribunal

INTERNATIONAL BUREAU OF EDUCATION

1. Origins

Although the idea of an international bureau of education dates back to the early 19th century, it gained ground only in the first quarter of the 20th century. The proposal of Friedrich Zollinger, Secretary of the Zurich Department of Public Education, was adopted by the Jean-Jacques Rousseau Institute of Education in Geneva 1925, and a grant from the Rockefeller Foundation enabled the Institute to launch its project. In 1926, a secretariat was set up under the direction of Pierre Bovet, then professor at the University of Neuchâtel. Under the terms of the statutes adopted in June 1926, the aims of the Bureau, still a private organization, were to centralize documentation relating to research in education, to conduct inquiries (the results of which would be disseminated to educators), and to serve as a coordinating centre for institutions concerned

with education, encouraging meetings between educators and travel for study. These aspirations soon exceeded the Bureau's resources, however, and three years later a new formula was urgently sought.

Thus, on July 25, 1929, new statutes were signed whereby the International Bureau of Education (IBE) became an inter-governmental institution – the first in the field of education (→ Cultural and Intellectual Cooperation). The signatories were the representatives of the governments of Ecuador, Poland, and the Republic and Canton of Geneva, and by a representative of the Rousseau Institute.

Jean Piaget then became the director of the IBE, and Pedro Rosselló, who had long advocated inter-governmental status for the IBE, the assistant director. Together they were to build up the international conferences on public education and the related publication, the International Yearbook of Education. With a break only between 1940 and 1945, when the IBE provided intellectual assistance to → prisoners of war, the conferences were organized and the publications issued every year until 1968, with the number of member States increasing gradually to 68 countries.

2. Integration with UNESCO

By the late 1960s, for reasons both of duplicated functions and of finance, the IBE again needed to strengthen the basis of its work. With effect from January 1, 1969, it became an integral part of the → United Nations Educational, Scientific and Cultural Organization. The IBE had participated in UNESCO's creation in 1945 and had been collaborating with it for over 20 years under the terms of agreements signed in 1947 and 1952. The integration was effected under the terms of an agreement intended "to assure, under the responsibility of Unesco, and by appropriate measures, the continuity of the work pursued since 1929 by the IBE" (UNESCO Doc. 15 C/83, Annex II).

3. Functions

Under the terms of the IBE Statutes adopted by the General Conference of UNESCO at its 15th session (Res. 14), the Bureau, enjoying "wide intellectual and functional autonomy", has the following functions:

"(a) to prepare for and organize, at least every two years, the sessions of the International Conference on Public Education [whose title was later changed to 'International Conference on Education'] in accordance with the decisions of the General Conference and subject to Unesco rules in force and applicable;

(b) to undertake educational studies particularly on comparative education and to publish the results, co-ordinating its work with that of other institutions pursuing similar objectives;

(c) to continue its work on educational documentation and the dissemination of information on education;

(d) to maintain and develop an international educational library and a permanent international exhibition of public education". (Art. II).

To carry out these functions, the IBE is structured in three units concerned respectively with studies, documentation, and publications, with the support of an administrative unit. Its draft programme and budget are approved by the General Conference of UNESCO on the proposal of the IBE Council, which is composed of distinguished educators representing 24 member States designated by the General Conference.

It is the Council in particular which proposes the special subject of the International Conference on Education (since 1971 a biennial event) convened by the Director-General of UNESCO. The internal preparation for the Conference is the responsibility of the IBE Studies Unit. Discussions at the Conference have by tradition been devoted to major trends in educational development, on the one hand, and, on the other, to the subject proposed by the Council in the light of world needs as revealed by these trends.

The results of the discussions from the subject matter of the International Yearbook of Education (which resumed publication in 1980), while the special subject, on which a recommendation is adopted by the Conference, results in a comparative study. Apart from these volumes, the IBE publishes bibliographical bulletins (Educational Documentation and Information, started in 1926, and the Awareness List of the International Educational Reporting Service (IERS)) as well as

other specialized periodicals (Innovation, IERS Newsletter; IBEDOC Information, Documentation Centre Newsletter; and a Co-operative Educational Abstracting Service on Educational Policy in Member States). The "Ibedata" series comprises directories and specialized vocabularies, the latter including the UNESCO/IBE Education Thesaurus used for computerized data storage and retrieval in the Documentation Centre. Publications of the IBE appear, of course, under the imprint of UNESCO.

The Documentation centre includes a library of some 90 000 volumes and documents, and the International Exhibition on Education. The Exhibition, opened in 1929, was rebuilt after a fire in 1944 but closed for a decade before reopening in 1979 with an audio-visual presentation which accommodates the presentations of all member States of UNESCO.

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RODNEY STOCK

INTERNATIONAL BUREAU OF WEIGHTS AND MEASURES

The International Bureau of Weights and Measures (Bureau international des poids et measures (BIPM)), with headquarters at Sèvres, a suburb of Paris, was established by the Metric Convention signed in Paris on May 20, 1875 (CTS, Vol. 149, p. 237) as a permanent institution to carry on research concerning problems of standardizing weights and measures. On October 6, 1921 the Convention was modified and extended to include electrical units and standards (LNTS, Vol. 17, p. 45). An agreement was concluded on April 25, 1969 with the French Government concerning the Bureau's headquarters and the privileges and immunities of its staff on French territory (UNTS, Vol. 756, p. 61; → International Organizations, Privileges and Immunities).

In order to attain world-wide unification of physical measurement, the BIPM is charged primarily with the following functions: the comparison and verification of the prototypes of the metre and kilogram, the establishment of international standards and of measurement scales of other physical quantities, the custody of the international prototypes and the periodic comparison of national standards and measuring scales with the international prototypes. Further tasks are the calibration and comparison of geodetic measuring, the determination of fundamental physical constants as well as the improvement of the international system of units, which is the modern form of the metric system.

Based on the work of the BIPM, standards for the measurement of electricity were introduced in 1927, of photometry in 1937 and of ionizing radiation in 1960. On January 1, 1948 electrical units on a new basis corresponding to the mechanical units were introduced.

The General Conference, convened every six years and constituted of delegations from each member State, elects the International Committee of Weights and Measures, composed of eighteen members of different nationalities, which holds closed meetings at least every two years. The Committee is supported by eight Consultative Committees (electricity, ionizing radiations, photometry, thermometry, units, the definition of the metre, the definition of the second, and masses and connected quantities).

The BIPM is financed by contributions of the member States in proportion to their national revenues. The annual budget for 1978 was 5 950 000 gold francs. Members of the BIPM are the governments of 45 countries. Cooperation agreements have been concluded with the → United Nations Educational, Scientific and Cultural Organization (1948), the → International Atomic Energy Agency (1961 and 1967), the → European Atomic Energy Community (1965) and the International Bureau of Legal Metrology (1970).

A.J. PEASLEE, International Governmental Organizations, Part 3/4 (3rd ed. by D.P. Xydis, 1979) 248–258.

ROLF KÜHNER

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

see Investment Disputes, Convention and International Centre for the Settlement of

between the → United Nations Economic and Social Council and the French Government. It is situated in Paris. Its functions and spheres of activity are similar to those of the → United Nations Children's Fund (UNICEF) (→ Children, International Protection).

The initiative for the founding of the ICC was taken by the French Government. In a → note to UNICEF dated March 1949 it suggested that an international research and training centre for children be established in Paris. France declared herself willing to finance the centre with an initial sum of Ffr 175 million and subsequent annual contributions of Ffr 75 million. A committee set up by UNICEF and consisting of the representatives of the → United Nations Secretary-General, the → World Health Organization, (WHO), the → Food and Agriculture Organization, the → United Nations Educational, Scientific and Cultural Organization and the → International Labour Organisation examined the French proposal, defined the spheres of activity of the various international organizations concerned with child welfare and decided that the responsibility for supervising the activities of the proposed centre should be entrusted jointly to UNICEF and the French Government. The cooperation of WHO was also assured. On the basis of these proposals, the ICC was established by a French ministerial decree of November 10, 1949 as an institution of public welfare. It is governed by French law. On February 16, 1950 a cooperation agreement was signed by the French Government, UNICEF and WHO (UN Doc. E/ICEF/L.4).

The organizational structure of the ICC consists of the Administrative Council, the Technical Advisory Committee and the Directorate General. The ICC is not a membership organization. Six of the seventeen members of the Administrative Council are nominated by the French Government, specifically by the Ministry of Foreign Affairs and the Ministry of Public Health. The remaining eleven members are coopted by these members. Council members are appointed for three-year periods but may be reappointed an indefinite number of times. From among its members the Council elects a Bureau consisting of a president, two vice-presidents, a secretary and a treasurer. The Bureau is elected for a one-year period. Legally and in all civil actions the ICC is represented by the President. The Technical Advisory Committee consists of experts from the → United Nations Specialized Agencies interested in childhood problems. The ICC is financed by contributions from the French Government and UNICEF, and by voluntary donations from other organizations.

The most important tasks of the ICC are the medical education and training of suitable personnel, research on specific health, educational and social problems of children and adolescents, the collection and distribution of information, and comparative studies on the situation of children in different countries. The work of the ICC is intended to support the aims of the United Nations and the Specialized Agencies in the field of maternal and child care. Emphasis is therefore laid on the improvement of the living conditions of children and adolescents in the → developing States.

Since its foundation the ICC has organized more than 400 projects in education and training in 66 countries.

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JOACHIM WOLF

INTERNATIONAL CHILDREN'S CENTRE

The International Children's Centre (ICC) was established in January 1950 following negotiations

INTERNATIONAL CIVIL AVIATION ORGANIZATION

1. Historical Background; Functions

The International Civil Aviation Organization emerged from the International Civil Aviation Conference held in Chicago from November 1 until December 7, 1944. The Conference, in which 54 States participated, had been called by the United States in order to establish a legal framework for the reorganization of international civil aviation after World War II. The ICAO's predecessor was the International Commission for Air Navigation founded at the Paris Conference on International Navigation in 1919. The Chicago Conference resulted in the adoption of the Convention on International Civil Aviation (UNTS, Vol. 15, p. 295) which, apart from being the basic substantive instrument for the regulation of international aviation, also serves as the ICAO's constitutive charter. The Convention has since been amended on various occasions. Annexed to it are a number of international standards and recommended practices which have been adopted over the years by the ICAO Council. On April 4, 1947, when the Convention entered into force, the ICAO had already started to work on a provisional basis with its headquarters in Montreal (Provisional International Civil Aviation Organization). On May 5, 1947 the ICAO received the status of a Specialized Agency of the → United Nations (→ United Nations, Specialized Agencies).

Art. 44 of the → Chicago Convention sets out the ICAO's functions. The aims and objectives of the ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to, *inter alia*, ensure the safe and orderly growth of international civil aviation; encourage the arts of aircraft design; encourage the development of airways, → airports and air navigation facilities for international civil aviation; promote safety of flight in international air navigation; and to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport (→ Aircraft; → Aircraft Operations; → Traffic and Transport, International Regulation).

The IACO fulfils its objectives mainly by enacting uniform aviation standards, granting technical assistance and cooperation, and collecting and exchanging information. The ICAO's activities at large are not concentrated upon the economic aspects of air transport. Cooperation in the area of conditions of carriage as well as fares and rates has been left to the → International Air Transport Association, a non-governmental association of airlines. The exchange of traffic rights is also outside the ICAO's competence (→ Air Transport Agreements).

The IACO fulfils its objectives mainly by enacting uniform aviation standards, granting tech-as Europe, the North Atlantic, Caribbean and South Pacific regions, and the Middle East. The conferences are not only concerned with the discussion of questions of common interest; they also provide a forum for furthering the conclusion of international agreements on the maintenance of common services and improvement of air navigation facilities (e.g. the North Atlantic Ocean Weather Stations Agreement of May 12, 1949).

2. Membership

The Chicago Convention distinguishes between States that may join the ICAO by ratifying or adhering to the Convention and former enemy States which are subject to a special admission procedure (→ International Organizations, Membership). This special admission procedure makes the admission of former enemy States dependent on the assent of "any State invaded or attacked" by them. In ICAO practice, admission has been conditional merely on the approval of the → United Nations General Assembly and the deposition of the instrument of adherence. The ICAO now includes almost every State engaged in international civil aviation. The Soviet Union, originally refusing to adhere to the Convention in protest against the inclusion of some participating States, acceded to membership in 1970. The Convention also provides for the termination and suspension of membership. A contracting State's voting power in the Council and Assembly (see section 3 *infra*) may be suspended for failing to discharge its financial obligations towards the ICAO. This provision has been broadly interpreted to include also suspension from those ICAO subsidiary bodies and denial of those portions of ICAO general services furnished to con-

tracting States, as decided by the Council. A State may also be expelled from the ICAO if it fails to ratify certain amendments to the Convention or if the UN General Assembly recommends its expulsion.

3. Structure; Financing

The ICAO discharges its functions through its Assembly, Council and various subsidiary bodies. Each member State is represented in the Assembly and is entitled to one vote. The Assembly meets in regular sessions at least once every three years. Decisions of the Assembly must be taken by a majority of the votes cast. The Assembly's major powers and duties are: the election of the Council, the determination of the ICAO's financial arrangements, the review of its work (including expenditures and accounts, the delegation of powers to the Council and subsidiary commissions) and the consideration of proposals for the modification of the Chicago Convention. Generally speaking, the Assembly determines the ICAO's policy guidelines and is authorized to "deal with any matter within the sphere of action of the Organization not specifically assigned to the Council" (Chicago Convention, Art. 49(k)).

The Council is composed of representatives of 33 contracting States and is elected by the Assembly. In electing the members of the Council, the Assembly must give adequate representation to: (a) the States of chief importance in air transport, (b) the States which make the largest contributions to the provision of facilities for international civil aviation, and (c) the States whose designation will insure that all major geographic areas in the world are represented in the Council. Decisions of the Council require approval by a majority of its members. The Council is a "permanent body responsible to the Assembly" (Art. 50(a)). It can be described as the governing board of the ICAO, with a multitude of mandatory and discretionary legislative, judicial and administrative functions. Legislative functions include the adoption of air nagivation and air transport regulations (i.e. the international standards and recommended practices annexed to the Convention). As a judicial body, it has the power to adjudicate disputes between the contracting States with respect to the interpretation and application of the Convention (→ Jurisdiction of the ICAO Council Case). In most cases, the Council has acted as a mediator and has induced the parties to enter into extensive negotiations towards a settlement without invoking the adjudicatory machinery (→ Conciliation and Mediation).

The Council's administrative functions include, *inter alia*, the appointment of the chief officers such as the Secretary-General and the President of the Council, the administration of finances, the execution of the directives of the Assembly and the supervision of the commitments of contracting States with respect to their fulfilment of the commitments laid down in the Chicago Convention and related international agreements for the joint financing of air navigation facilities and services.

The Air Navigation Commission and the Air Transport Committee, whose powers and duties are stipulated in the Chicago Convention, act under the authority of the Council. The Air Navigation Commission is charged with the task of considering and recommending to the Council modifications of the annexes to the Convention.

The Legal Committee deals mainly with the preparation and modification of multilateral conventions and advises the ICAO on all legal questions. A number of significant air law conventions in the field of public and private international → air law have been concluded on the basis of drafts and proposals of the ICAO's Legal Committee.

The expenses of the ICAO are apportioned among the contracting States according to a system determined by the Council. The decisive factor in making the apportionment is the financial capacity of each contracting State, defined on the basis of its gross national product and its per capita income.

4. Rule-Making

One of the most remarkable legal features of the ICAO concerns its technical legislation (→ International Legislation). While every State prescribes its own technical regulation with respect to its national airspace, efficiency and safety in international civil aviation is dependent upon uniform aviation rules. The Chicago Convention obliges contracting States to collaborate in securing the highest practicable degree of uniformity concerning regulations, standards, procedures and

organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity would facilitate and improve air navigation (→ Unification and Harmonization of Laws). To this end, the ICAO has been authorized to adopt and amend international standards and recommended practices and procedures dealing with matters such as communications systems, log books, aeronautical charts, customs procedures, aircraft in distress, the characteristics of airports, the rules of the air and air traffic control practices, the licencing of operating and mechanical personnel, the airworthiness of aircraft, the registration and identification of aircraft, and the collection and exchange of meteorological information (see also → World Meteorological Organization).

The ICAO's legislative authority, however, is subject to a special kind of → veto by the member States. Any annex adopted by the Council becomes effective only after the expiration of a certain period of time, provided that the majority of contracting States has not, in the meantime, registered its disapproval with the Council. Even if such a disapproval has not been registered, the contracting States have no legal obligation to comply with the provisions of a duly promulgated annex. Any State which finds such compliance "impracticable" or which deems it necessary to adopt differing domestic regulations or practices is only obliged to notify the Council immediately of the differences between its own practice and that established by the international standards (Convention, Art. 38). In summary, it is for each contracting State to decide whether or not to comply with or to give effect to an international standard. The only exceptions to this freedom of action which the member States enjoy are the Rules of the Air, laid down in Annex 12 of the Convention. Compliance with those rules relative to flight and manoeuvre of aircraft is mandatory.

It is doubtful whether failure to give notification of differing practices or of non-compliance is a breach of the Convention giving rise to liability (→ Responsibility of States: General Principles). It has been contended that, in ICAO practice, silence does not generally denote non-compliance, since some States do not yet have the technical and administrative capabilities to fully discharge their obligations under Art. 38 of the Chicago Convention. It appears that, due to careful preparation and prior consultation procedures, no annex has yet failed to gain approval by a majority of member States after its adoption by the two-thirds vote of the Council.

5. Amendments to the Chicago Convention

Particular legal problems have arisen with respect to the amendment provisions in the Chicago Convention. Art. 94(a) provides that any proposed amendment to the Convention must be approved by a two-thirds majority of the Assembly. The amendment then comes into force in respect of ratifying States once it has been ratified by the number of contracting States specified by the Assembly. This number may not be less than two-thirds of the total number of contracting States. There have been various amendments, most of them concerning the ICAO's structure and internal functioning. The numbers of members of the Council and of the Air Navigation Commission have been repeatedly increased to reflect the growing accession of new States to ICAO membership. Although none of these amendments have been ratified by all member States, all amendments have been implemented. Moreover, all States voted for the expansion of the Council and Commission. This absence of → protest may be attributed to the fact that the constitutive instrument of an international organization must necessarily be applied in a uniform manner.

The question of a non-ratifying State's position with regard to amendments of the Chicago Convention may arise again, however, when political issues are at stake. Thus, at the request of the UN General Assembly, the ICAO Assembly in 1947 approved an amendment to the Convention providing that a State expelled from UN membership automatically ceases to be a member of the ICAO, and that a State suspended from the UN is suspended from the ICAO at the request of the UN. The intent of the amendment was to exclude Francoist Spain from the ICAO. The provision was, however, not invoked, because Spain voluntarily withdrew from the ICAO for some time. It may well be argued that the adoption of the amendment could not lead to the expulsion of a State which had not ratified it. In summary, the ICAO encountered considerable difficulties with the amendment

process prescribed by the Chicago Convention. As a result, many provisions of the Convention have been reshaped without formal amendment.

6. *Evaluation*

The ICAO's technical character explains why it has been able to achieve considerable advances in the field of air navigation regulations without excessive interference through political influence. Political disputes have troubled the ICAO mainly with regard to problems of membership, → sanctions against member States and the establishment of prohibited areas for civil aviation (e.g. the dispute between India and Pakistan due to Pakistan's refusal to permit Indian aircraft to fly over West Pakistan; the dispute between the United Kingdom and Spain following Spain's determination that the airspace in the vicinity of Gibraltar was a prohibited area; → Air, Sovereignty over the). Problems in the ICAO's work have arisen due to the widening gap between technologically advanced States and → developing States. A number of contracting States have not been able or willing to comply with ICAO regulations.

In spite of considerable difficulties, the ICAO has managed to develop a uniform aviation code, thereby furnishing a necessary prerequisite for today's international civil aviation. In matters of political importance such as the prevention of international → terrorism, on the other hand, the ICAO has not been very successful. On the whole, the ICAO's flexible law-making procedure in the technical field has to date enabled continuous modifications of technical regulations corresponding to rapid technical change. There are, however, numerous problems, such as supersonic aircraft, the use of → spacecraft in airspace, and the growing concern about environmental pollution (e.g. → Air Pollution) which are still to be solved within the ICAO framework.

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KAY HAILBRONNER

INTERNATIONAL CIVIL DEFENCE ORGANIZATION

In 1931 French Surgeon-General Georges Saint-Paul founded the "Lieux de Genève" association (International Organization for the Protection of Civilian Population in Wartime) in Paris. The original purpose of the Organization

was the promotion of → safety zones during wartime: neutralized zones in which the civilian population could seek refuge (→ Civilian Population, Protection). Saint-Paul particularly had in mind women, children, and sick and aged persons.

In 1935 the French Parliament adopted a resolution inviting the → League of Nations to study the means of creating in every country, according to the agreements ratified by the League of Nations, localities, places or zones which could in case of → armed conflict be preserved from all combat and use for military purposes (→ Military Objectives; cf. → Open Towns).

The Organization was a private humanitarian organization. In order to cooperate as closely as possible with other international organizations, its seat was transferred in 1937 from Paris to Geneva. This Organization shares, with the International Committee of the → Red Cross (ICRC), the main credit for introducing the provisions on safety zones into the → Geneva Red Cross Conventions of 1949 (Convention I, Art. 23; Convention IV, Art. 14).

In January 1958 the name of the Organization was changed to the International Civil Defence Organization (ICDO) (Organisation internationale de protection civile (OIPC)). More important than the change of name were the changes in structure and the expansion of the body's aims (→ Civil Defence).

The statutes have twice been changed considerably. In 1958 the new statutes opened membership in the ICDO to individuals as well as to corporate bodies such as associations, societies and even governments (→ International Organizations, Membership). In 1966 at Monaco the representatives of the member States of the ICDO adopted the text of the present constitution which conferred on it the status of an intergovernmental organization. This constitution came into force on March 1, 1972 at the first General Assembly of member States and was registered in 1975 at the United Nations Secretariat.

The expansion of the ICDO's aims is expressed in the → preamble to the Constitution:

> "to intensify and coordinate on a world-wide scale the development and improvement of organizations, means and techniques for preventing and reducing the consequences of natural disaster in peacetime or of the use of weapons in time of conflict".

The original purpose was expanded in three directions: to deal with all matters of civil protection during wartime; to establish liaison between national civil defence organizations; and to promote protection and safety of persons and of property in all types of disasters during peacetime (→ Relief Actions; → United Nations Relief and Rehabilitation Activities). In order to meet these considerably expanded goals, the ICDO has to date organized nine World Civil Defence Conferences (Berlin 1954; Florence 1957; Geneva 1958, 1963 and 1972; Montreux 1961; Caracas 1974; Tunis 1978; Rabat 1980) and many technical exhibitions, as well as international conferences on radiation protection, industrial civil defence and disaster medicine.

The ICDO publishes a monthly bulletin entitled "International Civil Defence", in English, French, German, Spanish and Arabic, as well as reports and proceedings of the World Civil Defence Conferences.

ANTON SCHLÖGEL

INTERNATIONAL CIVIL SERVICE *see* Civil Service, International

INTERNATIONAL COMMISSION FOR FOOD INDUSTRIES

The International Commission for Food Industries (ICFI) was established in 1934 by an inter-governmental agreement on the initiative of France. The ICFI took over the work of two organizations: the International Commission set up in 1905 at the first International Technical and Chemical Congress on Sugar Refining and Distilling, and the International Commission set up after the first International Congress of Pure and Applied Chemistry in 1894. The Statute in force for the ICFI dates from 1966.

The ICFI is an organ which assists industries concerned with the conservation and/or processing of vegetable and animal products derived from agriculture, forestry and fishing (Statute, Art. II; see also → Commodities, International

Regulation of Production and Trade; → Fisheries, International Regulation). Its aim is to deal with questions of a scientific, technical, economic and social nature of interest to these industries (Art. I). The activities include the organization of congresses and symposia as well as training measures for technicians in this field. The task of the collection, collation and distribution of useful documents and information (Art. I) has been transferred to the Documentary Centre for Industries using Agricultural Products, a branch of the French Ministry of Agriculture. In accordance with Art. I of the Statute, the ICFI has established contact with → United Nations Specialized Agencies (among others, the → Food and Agriculture Organization), which recognize the ICFI as having consultative status.

Whereas the founding agreement of 1934 was concluded between some 40 governments, the number of ICFI members has diminished from 12 (1975) to 8 (1982). The regular members are Spain, France, Hungary, Madagascar, Mexico, Greece, Portugal and Tunisia. In addition, in accordance with Art. IV of the Statute, there are scientific, technical, and professional organizations and establishments as associated members.

The organs of the ICFI are the General Assembly, the Executive Committee, the Scientific Council and the Secretariat General. In the General Assembly, each member is represented by one delegate from each of the member governments (Art. VIII). Decisions are taken by simple majority of members present and voting, except in special cases where a majority of two-thirds is required (Art. XI). The members can choose the amounts of their contributions (Art. XXIII). The 1976 budget comprised about 500 000 French francs. The official languages are French, German, English and Spanish, but Russian may also be used as a working language upon a decision of the Executive Committee (Art. VI).

The ICFI publishes a monthly "International Bibliography of Food Industries", a journal entitled "Food and Agricultural Industries", and proceedings of its conferences and symposia.

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HANS-HEINRICH LINDEMANN

INTERNATIONAL COMMISSION ON CIVIL STATUS

1. History, Organization and Tasks

The creation of an International Commission on Civil Status was first suggested at the 1948 Amsterdam meeting of the Comité provisoire de l'Association internationale des officiers de l'état civil. A year later, on September 25, 1949, the Commission was established as an international governmental organization by a protocol signed in Berne by Belgium, France, Luxembourg, the Netherlands and Switzerland. Seven more States have in the meantime become members of the Commission: Turkey (1953), the Federal Republic of Germany (1956), Italy (1958), Greece (1959), Austria (1961), Portugal (1973) and Spain (1974).

The Commission is based on national sections, the members of which are named by governments. Delegates of these sections constitute the General Assembly, where all international agreements are discussed and adopted. The drafting of conventions and recommendations as well as administrative questions are left to the Bureau composed of the presidents of the national sections and one additional member for each section. The cooperation between the national sections and with all other international organizations is secured by the Secretary-General. He is elected by the Bureau and is also responsible for the development of the Commission's policy guidelines. The Commission is financed by contributions of the member States.

The Commission's task, according to both the Berne protocol and to its statutes, is to improve the legal framework of civil status through better means of providing mutual information, with the help of international agreements (→ Treaties). The Commission has since the early 1950s therefore published documentation on the laws of the member States. In addition, 20 conventions have been adopted, 17 of which have entered into force. Member States of the → Council of Europe can accede to all the conventions, and most may also be acceded to by any interested State (→ International Organizations, Membership).

2. Conventions and Recommendations

The conventions can be divided into two groups. The first group concerns purely technical

questions, such as the development of multilingual forms for the conclusion of marriages, for the registration of births and deaths, and for the exchange of specific information as, for instance, changes in → nationality. The purpose of these conventions is to avoid costly translations, complicated inquiries and the presentation of a large number of documents, in order to improve the position of the persons concerned by eliminating as many administrative obstacles as possible (→ Legal Assistance between States in Civil Matters).

The second group deals with problems of family law and of → private international law. The Commission attempts with these conventions either to unify family law rules, as in the case of the acknowledgement of maternity, or to establish common rules, as for example in the case of the legitimation by subsequent marriage, the voluntary acknowledgement of illegitimate children and the recognition of foreign divorces (→ Unification and Harmonization of Laws). The Commission has given special attention to the uncertainty arising out of the resort to public policy clauses. Many of the conventions therefore enumerate the possible conflicts and at the same time exclude any general reference to public policy. This is due to the conviction that within a group of States which generally share a common core of legal principles public policy should not be permitted to sabotage international agreements. The Commission has also been increasingly aware of the necessity of a uniform application of the conventions. Differences of opinion on the exact content of the convention on the acknowledgement of maternity have prevented an important number of States from ratifying it. Therefore, following the entry into force of the convention on the recognition of foreign decisions concerning the dissolution of marital links, the General Assembly adopted an explanatory report giving guidelines for its interpretation (→ Interpretation in International Law).

In addition, the General Assembly has adopted three recommendations. Two of these aim at a better integration of → refugees, either by facilitating the delivery of documents concerning civil status or by avoiding unnecessary complications in such simple matters as the inscription of names in public registers (see also → Intergovernmental Committee for Migration; → International Refugee Organisation). The other recommendation outlines the principles for a unification of the rules on the conclusion of marriage in the member States.

3. International Cooperation

The Commission has always been conscious of the dangers of conflicting international agreements and has therefore tried to promote international cooperation. Thus, as early as 1955, in an exchange of letters with the Council of Europe, it was agreed that the Commission act as an official expert of the Council in all matters concerning civil status and that it should be consulted before decisions in this field are taken by the Council. In 1969, a similar exchange of letters established an intensive cooperation with the Hague Conference on Private International Law (→ Hague Conventions on Private International Law; → Hague Conventions on Civil Procedure). In view of the experience gleaned from the two conventions on the recognition of divorces, both organizations agreed to confer regularly on their programmes in order to avoid duplicating work. In a third and last exchange of letters, the Commission and the United Nations High Commissioner for Refugees expressed their wish to coordinate their efforts to solve the civil status problems of refugees (→ Refugees, United Nations High Commissioner).

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SPIROS SIMITIS

INTERNATIONAL COMMITTEE OF MILITARY MEDICINE AND PHARMACY

The International Committee of Military Medicine and Pharmacy (ICMMP) with

headquarters in Liège, Belgium, was established on July 21, 1921. It was founded as a result of the first International Congress of Military Medicine and Pharmacy – initiated by the Belgian Government – as the Standing Committee for International Congresses of Military Medicine and Pharmacy. In 1930 a statute was agreed upon, which received amendment in 1938, 1954 and 1976.

In the spirit of the → Geneva Red Cross Conventions and Protocols, the aim of the ICMMP is to maintain and to strengthen the bonds of professional collaboration between those whose task it is to care for the sick and wounded of the armed forces (→ Wounded, Sick and Shipwrecked). The Committee is dedicated to work for the improvement of their lot and the relief of their suffering both in times of peace and war. It strives to ensure the rapid circulation of knowledge and the standardization of the disciplines and techniques appropriate to achieving most effectively the protection and safeguarding of human life in the military domain.

Since 1921 the Committee has organized 23 large international congresses of military medicine and pharmacy as well as 9 advanced courses for young doctors in the armed services. Their aim was to establish contacts between new generations of medical officers. In general, what is intended is the promotion of a medical ethical conscience which is unaffected by political considerations and stands above any conflict.

Attached to the ICMMP is the International Office of Documentation on Military Medicine, whose purpose is to research, assemble and broadcast all technical or ethical documentation of interest to the Military Health Services. In 1960, a Study Center for International Medical Jurisprudence was set up in collaboration with the Medical-Legal Commission of Monaco.

The Committee maintains regular relations with other international bodies, especially the International Committee of the → Red Cross and the → World Health Organization, which, in 1952, recognized the ICMMP as an inter-governmental organization. The Committee meets periodically and is assisted by an Executive Bureau and several Technical Commissions. It is financed by contributions of the 89 member States as well as by private donations. The subordinate personnel, the premises and the equipment are furnished by the Belgian Government. The official press organ of the Committee is the International Review of the Army, Navy and Air Force Medical Services, published monthly.

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ROLF KÜHNER

INTERNATIONAL COMMITTEE OF THE RED CROSS *see* Red Cross

INTERNATIONAL DEVELOPMENT ASSOCIATION

1. Establishment; Purposes

The International Development Association (IDA) is a → United Nations Specialized Agency. Its Articles of Agreement, formulated by the Executive Directors of the → International Bank for Reconstruction and Development (IBRD) and submitted to the IBRD member governments on January 26, 1960 (UNTS, Vol. 43, p. 250), entered into force on September 24, 1960. The IDA provides longterm, low-cost loans for development (→ International Law of Development; → Loans, International); it was created in the period of → decolonization when many poor countries in need of development assistance were experiencing problems of credit worthiness, and therefore were unable to borrow from IBRD on commercial terms.

The purposes of the IDA are, under Art. I of its Articles of Agreement, to promote economic development, increase productivity and thereby raise standards of living in the less-developed areas of the world included within its membership. In particular, the IDA is to provide financing to meet the States' important developmental requirements on terms which are more flexible and which bear less heavily on the balance of payments than those of conventional loans, thereby furthering the developmental objectives of the IBRD and supplementing its activities. The IDA is to be guided in all its decisions by the provisions of Art. I. (Articles cited hereafter without further specification refer to IDA Articles of Agreement.)

2. *Organization*; *Membership*; *Voting*

The IDA's organizational structure is the same as that of the IBRD, although the IDA is legally and financially distinct from the IBRD. IBRD Governors appointed by countries which are IDA members are *ex officio* governors of IDA; IBRD Executive Directors who represent one or more countries which are IDA members are *ex officio* IDA Executive Directors; the IBRD's President is *ex officio* President of the IDA; and the IDA is administered by IBRD staff (Art. VI(2) (a), (4) (b), (5) (a) and (b)). The IDA's head office is in Washington, D.C.

Many of the provisions of the IDA Articles of Agreement are substantially the same as the provisions contained in the corresponding articles of the IBRD's Articles of Agreement. This is the case for the status, privileges and immunities of the IDA (Art. VIII), withdrawal and suspension of membership (Art. VII), suspension of operations (Art. VII), amendments to the Articles of Agreement (Art. IX) and → arbitration of disputes between the IDA and a member country and between IDA member countries (Art. X).

Membership in the IDA is open to members of the IBRD. Except in regard to original members, the terms and conditions of membership are determined by the IDA (Art. II(1) and (2)). A member country which ceases to be a member of the IBRD automatically ceases to be a member of the IDA (Art. VII(3)). As of June 30, 1982, the IDA had 130 member countries.

In contrast to the IBRD, the IDA has more flexible provisions in regard to the attribution of votes in the → weighted voting structure (Arts. II(2) and VI(3)). The IDA has two categories of members. Part I countries are developed countries, namely members of the → Organisation for Economic Co-operation and Development; Part II countries comprise mainly developing countries. The two categories have been given different treatment in the matter of financial contributions (weighing heavily on Part I countries), and in the matter of voting rights (see Arts. II and VI(3)).

3. *Financing*

The IDA was created as a source of concessionary finance. It was believed that a separate international organization to which both the developed and the developing countries would contribute, would command political support among donor countries, particularly the United States. It was clear that the institution would not be able to borrow in the capital markets but would have to rely on budgetary funds from its members. For these reasons, it was necessary to design a financial structure totally separate from that of the IBRD.

The IDA's initial resources took the form of members' paid-in subscriptions proportionate (at the rate of 1:20) to their total IDA subscriptions. Part I members were required to make their entire subscription available in gold or freely convertible currency; Part II members had this obligation only as to ten per cent (Art. II). Art. III authorizes additions to resources by individual members or the membership as a whole. The additions by the membership as a whole are known as replenishments, the terms of which are negotiated among donor countries and submitted for approval to the IDA's Executive Directors and Board of Governors. There have been six such replenishments, and negotiations for another are planned for 1983.

Some difficulties arose under the Sixth Replenishment. It could not become effective until at least twelve Part I members had deposited with the IDA Instruments of Commitment and Qualified Instruments of Commitment representing 80 per cent of the prescribed total. The effectiveness and conditions of this Replenishment were satisfied on August 24, 1981, upon receipt of the United States' formal notification of participation with a total contribution specified. The Resolution authorizing the Replenishment had provided for funding from donors' contributions over a three-year period. Prior to the effectiveness of the Sixth Replenishment, the IDA had made credit commitments against advance contributions. Upon the Replenishments' effectiveness and the termination of these advance contributions, the IDA faced a hiatus in its commitment authority. This resulted from a combination of two factors: (a) the decision taken by the United States to limit the size of her first instalment (for fiscal 1981) and (b) the pro-rata provisions in the Sixth Replenishment Resolution that allowed the IDA to commit resources from other donors only in the same proportion as

unqualified commitments from the United States. The practical effect was that even after receipt of the United States' first payment, credits approved by the Executive Directors and amounting to some $800 million equivalent could not be signed.

In view of the serious implications for the world's poorest countries of interruptions and reductions in IDA's commitment authority, an agreement was reached in September 1981 waiving the pro-rata rule in respect of the first instalment, but applying it to the commitment on credits of donors' second and third instalments. Several donors agreed to go beyond this agreement, and released their second instalments in full. These "modified" pro-rata arrangements came into effect on January 19, 1982. At the April 1982 IDA meeting concern was expressed that any actions taken would also have implications for commitment authority up to and including fiscal 1984. The more prominent proposals for plans to supplement IDA resource availability were: (a) a "relaxed" pro-rata scheme that would go beyond the arrangements earlier agreed, combined with additional contributions by donors in fiscal 1984 and (b) a Special Fund that would operate separately from, but parallel to, the arrangements made under the Sixth Replenishment. To date, no decision has been made on a course of action.

4. Operations

In the light of the purposes of the IDA, assistance is concentrated in the very poor countries, mainly those with an annual per capita income of less than $731 (in 1980 US dollars). More than 50 countries are eligible under this criterion. The terms of the IDA's lending operations (called "credits" to distinguish them from IDA "loans") have a very substantial grant element: 50-year maturity, 10-year grace period, a service charge of 0.75 per cent per annum on the disbursed and outstanding amount of credit and a 0.5 per cent commitment charge on the undisbursed and outstanding amount of the credit. The IDA's lending strategy is integrated with that of the IBRD; projects receive thorough examination and appraisal regardless of the source of funds. An increasing number of countries receive a combination of IBRD loans and IDA credits.

In order to alleviate the burden of external financing on the borrowing member countries' balance of payments, all credits have been made to governments. The Articles of Agreement permit the IDA, however, to "lend" also to public and private entities in member countries, and to public international or regional organizations; the Articles do not require, although they permit, government guarantees (Art. V(2) (c) and (d)). Where the funds are to be passed on by governments to public or private entities, the credit agreements contain provisions designed to avoid cost and price distortions, such as those requiring the funds to be relent on IBRD terms, or at locally prevailing rates of interest, taking into account who is to bear the exchange risk.

The credit agreements are substantially similar to the IBRD's loan agreements. One important difference, however, is that they are denominated in Special Drawing Rights (see → International Monetary Fund). With respect to procurement, disbursement and supervision, IDA practices are identical with those of the IBRD. Non-project lending is an exception, while the proportion of IDA local expenditure financing, which tends to have a low foreign exchange component, is higher than in IBRD loans.

Credits approved by IDA in fiscal years 1980, 1981 and 1982 were, respectively, $3838 million, $3482 million and $2686 million, equivalent for 103, 106 and 97 operations in 40, 40 and 42 borrowing countries.

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See also bibliography in → International Bank for Reconstruction and Development article.

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INTERNATIONAL ENERGY AGENCY

1. Historical Background

The countries constituting the → Organization of Arab Petroleum Exporting Countries (OAPEC), founded in 1968 separately from the → Organization of Petroleum Exporting Countries (OPEC), in 1973 decided to employ the export of crude oil as a political weapon. Their aims were to induce Israel to withdraw from the territories she had occupied in 1967 (→ Israeli-Occupied Territories) and above all to bring about a change in United States policy in the Middle East. OAPEC divided oil consumer countries into groups of friendly (Belgium, France, Spain and the United Kingdom), neutral (the Federal Republic of Germany and most Western European nations) and hostile (the Netherlands and the United States) nations. On October 16/17, 1973 OAPEC imposed a total oil → embargo on the countries designated as hostile and decided to reduce its monthly oil production by five per cent until the achievement of its political aims. The friendly countries were to be supplied as before, while the rest of the oil, a decreasing quantity due to lower production levels, was to be divided between the neutral countries.

In addition, the price of crude oil increased four-fold between the beginning of October 1973 and January 1974. Due to the monopolized supply of oil and the low demand elasticity, the measures taken by OAPEC sparked a crisis regarding both the quantity and price of oil, which in turn brought the balances of trade and of payments of the oil importing countries into disarray. The crisis, however, did not have the same effect on all the importing countries concerned. Canada, Norway, the United Kingdom and the United States in particular were able to mitigate the consequences of the crisis by rapidly developing their own oil resources.

The shock was such that the industrialized nations depending on crude oil started to discuss countermeasures at an early stage. On the initiative of the United States, the Intergovernmental Conference on Energy took place in Washington, D.C. on February 11/12, 1974. It was attended by the ministers of energy of Belgium, Canada, Denmark, France, the Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, the United Kingdom, and the United States; the → European Communities were represented by the Chairman of the Council and the President of the Commission, and the Secretary-General of the → Organisation for Economic Co-operation and Development (OECD) attended as an observer. There was agreement on "the need for a comprehensive action program to deal with all facets of the world energy situation by cooperative measures. In so doing they will build on the work of the OECD." The preparations were assigned to the Energy Co-ordinating Group (ECG), composed of senior officials. France neither signed the substantive part of the Communiqué of the Intergovernmental Conference on Energy (ILM, Vol. 13 (1974) p. 462), nor sent representatives to the ECG.

On September 20, 1974 the ECG approved the drafts of an OECD Council Decision and an Agreement on an International Energy Program (IEP). The Decision establishing an International Energy Agency was adopted by the OECD Council on November 15, 1974. The representatives of Finland, France and Greece abstained. The IEP Agreement was signed by 16 OECD member States in Paris on November 18, 1974. It was applied provisionally from that day and finally became effective on January 19, 1976. These two instruments are the basis for the International Energy Agency (IEA), which has its headquarters in Paris. All OECD members are free to join it, provided they are "able and willing to meet the requirements of the Program" (IEP, Art. 71(1)).

2. Structure

(a) General

The number of original members (Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States) was increased in 1977 by the entry of Greece and New Zealand, in 1979 by that of Australia and in 1980 by that of Portugal. Norway

holds a special position. On February 7, 1975 she concluded a special agreement with the IEA dealing mainly with cooperation in and application of Chapters V to VIII of the IEP (ILM, Vol. 14 (1975) p. 641). France, which has still not joined the IEA, maintains contact through the Commission of the European Communities, which has observer status (→ International Organizations, Observer Status).

The IEA was not created as a new and totally autonomous international organization but rather was "established as an autonomous body within the framework" of the OECD (Council Decision, Art. 1). The fact that it was established on the basis of two structurally different instruments – the OECD Council Decision of November 15, 1974 and the IEP Agreement, a multilateral treaty (→ Treaties, Multilateral) which prospective members have to ratify, requiring parliamentary approval in most countries – had various legal consequences. The IEA is an organ of the OECD. The competence for the energy field lies with the Governing Board of the IEA together with the OECD Committee for Energy Policy (European Yearbook, Vol. 24 (1976) p. 215). It is the Governing Board's duty to supply the OECD Council with information and regular reports. The IEA budget is part of the OECD's budget. The secretariat of the Agency is part of the OECD secretariat (OECD Council Decision, Arts. 6 to 10). In its private law transactions the IEA makes use of the legal personality of the OECD. Despite this, the IEA is in some respects, especially in the fields of decision-making, relations with other entities, drafting of the budget and duties of the secretariat, independent of the OECD.

(*b*) *Organs*

The Governing Board (OECD Council Decision, Arts. 4 to 6; IEP, Arts. 50 to 52) is the main organ of the IEA. It is composed of one or more ministers of each member State or their delegates. It adopts its own rules of procedure and voting. It can create organs necessary for the achievement of the Agency's aim and may delegate its powers to those organs. Not only must it decide upon and carry out the IEP, but it can also amend it – although only by unanimous decision and by taking into account the constitutions of the member States.

The Management Committee (IEP, Art. 53) is composed of one or more senior representatives of the governments of each member State. Only one of its possible tasks has so far been put into practice: the direct support of the work of the Governing Board. It meets only jointly with the Governing Board. The Agency Budget Committee must prepare the draft budget on the proposal of the Executive Director.

Further organs, which must carry out certain parts of the IEP and on which the Governing Board may confer other tasks, are the Standing Groups (IEP, Arts. 54 to 55), in which all member States are represented; there are Standing Groups on Emergency Questions (SEQ), on the Oil Market (SOM), on Relations with Producers and other Consumer Countries (SPC) and on Long-term Co-operation (SLT). This last body gave rise to the Committee on Energy Research, Development and Demonstration (CRD). The Standing Groups have created numerous supplementary organs.

Advisory organs (IEP, Art. 19(6) and (7)), which are composed of representatives of large oil companies, are the Industry Advisory Board (IAB) and for cases for emergency the Industry Supply Advisory Group (ISAG).

The Governing Board has established an IEA Dispute Settlement Centre (Charter adopted on July 23, 1980; ILM, Vol. 20 (1981) p. 241), which has the responsibility to resolve disputes "between a seller and buyer of oil, or between the parties to an exchange of oil, arising out of an oil supply transaction during implementation of the emergency allocation of oil" by arbitral tribunals; jurisdiction depends on explicit → declarations of submissions by the parties (Charter, Art. II). The rules of procedure for → arbitration (adopted by the Governing Board on November 10, 1981; ILM, Vol. 20 (1981) p. 1307) resemble those of the → United Nations Commission on International Trade Law (UNCITRAL) and those of the International Centre for the Settlement of Investment Disputes (→ Investment Disputes, Convention and International Centre for the Settlement of). No such disputes have arisen so far.

The organs of the IEA are supported by a secretariat headed by an Executive Director (OECD Council Decision, Art. 7; IEP, Arts. 59

and 60). Individual tasks are assigned to the secretariat in cases of emergency (IEP, Arts. 19 to 21 and 23).

(c) Decision-making power

The Governing Board (and organs authorized by it) can adopt recommendations by majority which are not legally binding upon the member States. It can also adopt decisions which are legally binding on member States in principle. Such decisions can be adopted by majority vote if they concern the management of the IEP or questions of procedure (IEP, Art. 61(1) (a)). In this system, a simple majority requires 60 per cent of the total combined voting weights and 50 per cent of the general voting weights (IEP, Art. 62(3)). The complicated scheme of → weighted voting is calculated using the aggregate levels of oil consumption in each country (IEP, Art. 62(2)). For certain decisions in situations of emergency, special majorities are necessary (IEP, Art. 62(4)). The weighted voting rules were created with a view to establishing an effective instrument for cases of emergency, despite the fact that a great variety of interests had to be taken into account. All States have at least three votes. In addition, most States are granted further votes in accordance with their amount of oil consumption (e.g. 47 additional votes for the United States, 15 for Japan, 8 for the Federal Republic of Germany). Although most decisions are subject to majority voting, almost all have in actual practice been based on → consensus rather than on a formal vote (→ Voting Rules in International Conferences and Organizations). All other decisions, especially those which impose new duties on member States, must be adopted unanimously by all member States present and voting (IEP, Art. 61(1) (b) and Art. 62(1)). Individual countries may be exempted from the binding effect of a decision, and the effect of a commitment also may be restricted to certain conditions (IEP, Art. 61(2)).

Member States are obliged to implement decisions taken by the IEA (IEP, Art. 66). The way this is carried out depends on the legal system of the respective member State. As the IEP refers to "necessary measures, including any necessary legislative measures", it is at the discretion of the member States to judge for each individual case whether a decision is self-executing (→ International Law in Municipal Law: Law and Decisions of International Organizations and Courts).

(d) Finances

The Agency's budget is part of the OECD budget and is in principle joined to its scale of contributions (IEP, Art. 64(1)). The Governing Board has so far not made use of the possibility of deviating from this scale. The Governing Board adopts a draft budget by majority vote and submits it to the OECD Council. IEA members adopt the Agency's budget finally in the OECD Council; under OECD voting rules this decision must be taken unanimously. All other necessary decisions regarding the financial administration of the Agency are within the terms of reference of the Agency's Governing Board (IEP, Art. 64(4)).

3. Activities

(a) Emergency system

It is the aim of the emergency system to reduce the member States' vulnerability to an insufficient supply of oil, as experienced in the 1973 oil crisis (IEP, Chapters I to IV and Annex). The means to do so are (i) the "emergency reserve commitment" (IEP, Arts. 2 to 4) which assures reserves sufficient to sustain consumption for at least 90 days with no net oil imports (extended from 60 days by Governing Board Decision of November 9, 1976, with effect from January 1, 1980), and (ii) the programmes of "contingent oil demand restraint measures" (IEP, Arts. 5 and 12 to 14), requiring that in case of a reduction in the daily rate of oil supplies of between seven and twelve per cent, final consumption must be reduced seven per cent compared to the level of the previous year. In case of a reduction of supply of twelve per cent or more, consumption must be reduced by ten per cent. This system also includes an "emergency reserve drawdown obligation" (IEP, Art. 7(5)).

Another important element of the emergency system is the allocation of oil between member States (IEP, Arts. 6 to 10). In principle, each member State has a supply right equal to its daily rate of consumption after emergency demand restraint has been activated, less its emergency reserve drawdown obligation. With the help of this rather complicated allocation procedure, the

quantities of oil available to the group are to be divided as fairly as possible amongst the member States. The members have to carry out decisions regarding allocation together with the oil companies. Activation and deactivation measures have to be taken either by member States or by the Governing Board together with the Standing Group on Emergency Questions and the secretariat (IEP, Arts. 12 to 24 and 34 to 36).

(*b*) *Information system*

The "information system on the international oil market" (IEP, Chapter V) is designed to supplement the emergency system. According to its general section (Arts. 27 to 31), member States must regularly report to the secretariat on various aspects relating to oil companies operating within their respective jurisdictions. These include corporate and financial structure, and in particular capital investments, terms of arrangements for access to major sources of crude oil, current rates of production including presumptive changes, stocks, costs od crude oil, prices and certain stipulations and obligations with respect to affiliates. Oil companies have to place these items of information at the governments' disposal to the extent that they are on a non-proprietory basis and to the extent that disclosure will not prejudice competition or conflict with the legal requirements concerning competition. The reports of the members are gathered by the Standing Group on the Oil Market in consultation with the oil companies and are then submitted by way of the Management Committee to the Governing Board for the adoption of the necessary decisions. The special section on the information system (Arts. 32 to 36) comes into effect in emergency situations. In such cases member States must provide all those particulars which are necessary to judge the situation and impose emergency measures. The procedure resembles that of the general section, but the drafting of the report is the task of the Standing Group on Emergency Questions.

(*c*) *Framework for consultation with oil companies*

The information system provides information by aggregation of individual data either on national or international levels. The "framework for consultation with oil companies" (IEP, Chapter VI), however, offers the possibility of obtaining information through individual consultations with the oil companies which could not be obtained by way of the information system. Its execution is assigned to the Standing Group on the Oil Market which reports to the Governing Board and makes proposals on appropriate cooperative action.

(*d*) *Long-term cooperation on energy*

It is one of the political aims of the IEA member States "to reduce over the longer term their dependence on imported oil for meeting their total energy requirements" (IEP, Art. 41; see generally IEP, Chapter VII). This should above all be achieved by conservation of energy, development of alternative sources of energy, energy research and development, and uranium enrichment (IEP, Art. 42; → Nuclear Research). It is especially in this field that the IEA has been active. This is evidenced not only by the establishment of the Committee on Energy Research, Development and Demonstration, which has taken over this field from the Standing Group on Long-term Co-operation, but also in its substantive work. By adopting the Long-term Cooperation Programme (LTCP; ILM, Vol. 15 (1976) p. 249), the member States have committed themselves to far more specific obligations than appear in Chapter VII of the IEP. One of them is the agreement on a minimum safeguard price; it is prohibited to sell imported oil on the home market below this price, in order to guarantee the possibility of energy research investment. The LTCP was extended by the Group Objectives and Principles for Energy Policy (Governing Board Decision of October 5, 1977). By carrying out these decisions, numerous research projects were developed, coordinated between the member States and research centres, and put into effect. There is also a framework agreement of January 6, 1976 concerning cooperation in the field of energy research with the → European Economic Community and the → European Atomic Energy Community.

(*e*) *External relations*

Whereas the IEA instruments outlined above were established to consolidate and safeguard the supply of energy through measures taken within the group, IEP Chapter VIII deals with the pos-

sibilities and conditions of an external cooperation for the same purpose with producer countries and other consumer countries. So far cooperation between the IEA and OPEC has not materialized, and it is unlikely that it ever will. Despite this, there are aims and interests shared by the members of both organizations, such as the interest in attaining an oil price which would lead to the development of alternative sources of energy and thus to the conservation of world oil reserves, as well as to the secure investment of oil earnings in the economies of the industrialized nations (→ Foreign Investments). The IEA and OPEC had indirect contact with each other at the Conference on International and Economic Cooperation (Paris, 1975–1976), where both took part as observers. Moreover, the IEA has begun to integrate → developing States into some of its activities, namely in the fields of research and development.

4. Evaluation

The structure of the IEA has given rise to legal problems which have not occurred, or at least not in the same way, in other international institutions. The question of whether the IEA enjoys legal personality in international or private law (→ Subjects of International Law) has been dealt with extensively and yet contradictorily in numerous publications. The fact that the IEA engages not only in activities which are typical for inter-governmental international institutions but also in those typical for → non-governmental organizations has not attracted much attention. The latter cover the fields of research and of cooperation with oil companies. In addition, there are various legal questions in connection with competition law (→ Antitrust Law, International), copyright, patent and trade-mark law (→ Industrial Property, International Protection) as well as with liability and insurance matters. These problems arise especially in the fields of research, demonstration and development (RD & D). Models for solution can be found in agreements on research projects in which governments or branches of governments and private bodies participate.

The work of the IEA points towards important aspects of economic stability on the part of the industrialized countries participating, both on the national and international levels. A situation testing the effectiveness of the instruments has not yet occurred, although the revolutionary events in Iran have been an apt reminder of the vulnerability of the industrialized countries' oil supplies. Such a test case would show whether member States, apart from complying with the measures provided for on an international level, have actually fulfilled the duty assigned them to reduce their dependence on oil imports.

Whether the political aims of the IEA can be achieved also depends on the readiness of member States not to attempt to increase their share in the oil supply. International solidarity within the group would be decisive. A disadvantage of the emergency system is the fact that it is designed for sudden shortfalls in the supply of oil but not for a structural scarcity in the world oil market.

The IEA has not developed into a consumer cartel. This is evidenced not only by the structural arrangements, but also by the insignificance, in practice, of the minimum safeguard price agreed in 1976. In the field of energy research there is a tendency towards the development of renewable sources of energy and a more reserved attitude towards nuclear energy as a result of public opinion in many member States (→ Nuclear Energy, Peaceful Use).

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INTERNATIONAL FINANCE CORPORATION

1. Purpose

The International Finance Corporation (IFC) was established on July 24, 1956 by an international agreement which had been opened for signature on May 25, 1955 (UNTS, Vol. 264, p. 117). It is a → United Nations Specialized Agency and is the affiliate of the → International Bank for Reconstruction and Development (IBRD) established to further economic development by encouraging the growth of productive private enterprises and to assist such enterprises which will contribute to the economic development of its developing member countries (→ International Law of Development). The responsibilities of the IFC are to:

"(i) in association with private investors, assist in financing the establishment, improvement and expansion of productive private enterprises . . . by making investments, without guarantee of repayment by the member government concerned, in cases where sufficient private capital is not available on reasonable terms; (ii) seek to bring together investment opportunities, domestic and foreign private capital, and experienced management; and (iii) seek to stimulate, and to help create conditions conducive to, the flow of private capital, domestic and foreign, into productive investment in member countries." (IFC Articles of Agreement, Art. I; Articles cited hereafter without specification refer to the IFC Articles of Agreement.)

2. Membership and Voting

The prerequisite for membership in the IFC is membership in the IBRD (Art. II(1)). The IFC may, for other than original members, set conditions for membership. As of June 30, 1982, the IFC had 122 member States.

The → weighted voting structure is similar to those used by the IBRD and the → International Development Association (IDA). The capital structure is similar to that of the IBRD (Art. II).

3. Organization

IFC headquarters is in Washington, D.C. The IFC operates as a separate entity, with its own staff drawing on the administrative services of the IBRD for support functions. However, as with the IDA, IBRD Governors appointed by countries which are members of the IFC are *ex officio* Governors of the IFC. Similarly, Executive Directors of the IBRD representing one or more IFC member countries are *ex officio* members of the IFC Board of Directors. The President of the IBRD is *ex officio* President of the IFC, but delegates day-to-day management tasks to an Executive Vice President. The IFC publishes an annual report separate from those of the IBRD and the IDA. The other provisions of its Articles of Agreement, including the privileges and immunities of the IFC, are substantially the same as those of the IBRD and the IDA (→ International Organizations, Privileges and Immunities).

4. Policies; Operations

The IFC tailors its investment operations to the needs and circumstances of each member country. However, the degree to which it can meet its objectives is heavily dependent upon the decisions of private investors which, in turn, are influenced by their perceptions of the business climate and opportunities. For this reason, a significant part of IFC's efforts are devoted to developing investment opportunities through its promotional work and helping raise the level of investor confidence in selected projects by working with local investors, foreign partners, other financial institutions and host governments.

In determining what investment opportunities to pursue, the IFC maintains a fundamental policy of investing in enterprises that can provide both an adequate financial return on the IFC's investment and an adequate economic return to the country in which the investment is made. Additionally, the IFC is prepared to provide assistance only in those cases where it determines that private resources would not otherwise be forthcoming on reasonable terms.

It is noteworthy that under Art. III(3) (iv) of the IFC's Articles of Agreement, the IFC may not assume responsibility for managing any enterprise in which it has invested; nor may it exercise voting rights for such purpose or for any purpose which, in its opinion, is properly within the scope of managerial control. The IFC is one of the few international organizations which can make both equity investments and loans without governmental guarantees (→ Loans, International). This permits the Corporation to provide financial assistance suited to the needs of each project and to the ability of each firm to raise funds from other sources on reasonable terms.

During the fiscal year 1982, 65 projects were undertaken, showing an increase from 56 during 1981 and 55 during 1980. At the same time, the IFC expanded its investment promotion work by 15 per cent. The total value of approved investments of US $611.8 million in 1982 was US $199 million lower than the previous year. The IFC maintained its objective of syndicating about one-third of its loans to commercial financial institutions.

The IFC is continuing to concentrate greater promotional efforts in its smaller and poorer member countries, particularly in Africa, where projects tend to be smaller. As a result of this effort, about half of the projects approved by the Executive Directors were in countries with per capita incomes of less than US $760 per year. Eighteen of the investments were in Africa, sixteen in Asia, twenty-three in Latin America and the Caribbean, and seven in the Middle East and Europe.

The IFC is also in the process of diversifying its investment activities. Manufacturing, which in the past accounted for about two-thirds of the number of projects, was about half of the total for 1982. Investments in agribusiness and financial institutions were proportionally higher.

At the end of 1982 the IFC's investment portfolio (including undisbursed balances) held for its own account was US $1835 million, up US $188 million from the previous year. In addition, US $1066.8 million was being held and administered for participants in IFC financing. The IFC draws its funding by borrowing from the IBRD. In line with a recent policy change to provide funds in currencies other than US dollars, Swiss francs, Deutsche marks, and Japanese yen have been used.

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See also bibliography in → International Bank for Reconstruction and Development article.

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INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

1. Establishment and Historical Background

On June 13, 1976 the Agreement Establishing the International Fund for Agricultural Development (thereafter Agreement) was adopted after lengthy and difficult negotiations. It entered into force on November 30, 1977, thereby establishing the International Fund for Agricultural Development (IFAD) as the 15th → United Nations Specialized Agency. The provisional seat of IFAD was located at Rome and no final decision on the headquarters has yet been taken.

The establishment of IFAD was recommended by Resolution XIII of the 1974 World Food Conference in Rome, which also proposed the creation of the → World Food Council. Such institutions had already been called for by the 1973 summit conference of the → non-aligned States in Algiers in light of the world food crisis of 1972; the proposed institutions were believed necessary to supplement the existing bodies working in that

field, such as the → Food and Agriculture Organization of the United Nations and the → World Food Programme (UN/FAO). The experience of the quadrupling of oil prices in 1973/1974 and the Declaration and Programme of Action on the Establishment of a New International Economic Order (→ International Economic Order) adopted at the Sixth Special Session of the → United Nations General Assembly in 1974 (UN GA Res. 3201 and 3202 (S-VI)) can be regarded as the catalysts for the creation of IFAD as a new type of international financial institution, taking into account the new role of the oil-producing countries (→ Organization of Petroleum Exporting Countries (OPEC)) and the aspirations of the → developing States (→ International Law of Development).

2. Objectives and Structure

The main objectives of IFAD are to channel additional resources for agricultural development to developing member States, in part on highly concessional terms, for the introduction, expansion or improvement of food production systems and the strengthening of related policies and institutions within the framework of national priorities and strategies. Special emphasis is put on the poorest food-deficit countries and on the necessity to increase the nutritional level of the poorest sector of the populations concerned (Art. 2 of the Agreement).

The tripartite structure of IFAD represents a new form of international organization. In conformity with the principles of equal representation and of group parity, membership rights are divided equally among three different categories of States (→ International Organizations, Membership). Category I comprises 20 developed member countries of the → Organisation for Economic Co-operation and Development; category II groups 12 developing countries of OPEC. These two categories are the donor countries. The beneficiary countries are to be found in category III, encompassing more than 100 developing countries. Under the principle of selection of category by the member State itself (self-election), category III includes the OPEC member Ecuador as well as the OECD States Greece, Portugal and Turkey, and the only East European countries taking part at all, Romania and Yugoslavia. Isreal, however, was placed in this category by a compromise decision but was left without entitlement to the resources of the Fund. In both the IFAD Governing Council and the Executive Board, each category is entitled to 600 votes, which are apportioned according to rules that differ for each group and are annexed to the Agreement. Thus in category I, 17.5 per cent of the votes are distributed equally, the remaining 82.5 per cent being allocated in proportion to the contributions of the members; whereas in category II, 25 per cent of the votes, and in category III all the votes are distributed equally (→ Voting Rules in International Conferences and Organizations; → Weighted Voting).

The organs of IFAD are: the Governing Council, the Executive Board and the Presidency. The basic decisions, in particular regarding amendments to the Agreement, membership questions and the adoption of regulations and by-laws are left to the Governing Council, which meets annually or in special sessions and in which all members of IFAD are represented by a governor or an alternate. The Executive Board is responsible for the conduct of the general operations of the Fund. It is comprised of 18 members, 6 from each category, elected for a term of three years according to the various group rules which in the case of category III aim at equal representation of the three main regions, Africa, Asia and Latin America, according to the practice developed within the → United Nations Conference on Trade and Development. The President is appointed for a term of three years by a majority of two-thirds of the Governing Council. He may hold only two consecutive terms of office. Decisions are generally taken in the Governing Council by a simple majority, and in the Executive Board by a majority of three-fifths of the votes cast. However, in practice the principle of → consensus prevails.

The resources of IFAD consist of initial contributions made by States within categories I and II on becoming members of IFAD, with additional contributions to be obtained through replenishments, increases in member States' contributions agreed upon by the Governing Council and special contributions; the latter do not count either in calculating weighted voting rights or towards determining the disputed ratio of burden-sharing between the OECD and OPEC member States. The unit of account employed is that of

the Special Drawing Rights of the → International Monetary Fund. The initial resources from original members are indicated in Part II of the annex to the Agreement. These amounted to $606 million from the OECD countries, $435 million from the OPEC countries, and $19 million from other developing countries, which are not in principle obliged to contribute to IFAD resources and which enjoy special rights. The former OPEC Special Fund, which in 1980 was reconstituted as the → OPEC Fund for International Development, plays a coordinating role in regard to the contributions of the OPEC countries.

3. Activities; Legal Problems; Evaluation

In its first three-year period 1978–1980, IFAD had committed almost all of its initial resources in the form of loans and grants for 60 projects and a similar number of technical assistance grants (→ Economic and Technical Aid). Three-quarters of the loans were made to the poorest developing countries, in particular the least developed countries, on highly concessionary terms. Most projects IFAD is involved in are co-financed, the larger part being under the direction of other financial institutions such as the World Bank (→ International Bank for Reconstruction and Development) or its affiliate, the → International Development Association, and → regional development banks. A minority of the projects are IFAD-initiated (24 out of 60 during the 1978–1980 period) and are under the direction of or in some cases solely financed by IFAD.

In the initial period of its activities, the Fund has had to rely considerably on the existing experience of other financial institutions. This was in accordance with the terms of and intentions behind the Agreement, which calls for close cooperation of IFAD with the FAO and with other relevant international institutions especially in regard to the appraisal and supervision of projects as well as the administration of loans. This serves to avoid new and unnecessary bureaucracies. In this respect, various agreements on general principles of cooperation were concluded with those institutions. In practice this system led to problems of its own as IFAD had to accept the application of the internal rules of those institutions with whom it was cooperating, such as their procurement regulations and operational guidelines. However, the policies IFAD wishes to implement in its activities have been formulated in the "Lending Policies and Criteria" adopted in 1978 by the Governing Council. It might be noted in this context that the Agreement explicitly contains a clause of non-interference with the political affairs of member States (cf. → Non-Intervention, Principle of). Decisions are to be based only on development policy considerations (Agreement, Art. 6, Sec. 8(f)).

When in 1981 IFAD had committed all of its initial resources, the replenishment of the Fund for the period 1981–1983 led to laborious negotiations on the question of "burden-sharing" (i.e. the relative proportion of contributions to be borne as between members of categories I and II). This having already been the main problem during the establishment of IFAD, it could be solved only provisionally for the period of 1981–1983 by the following formula: category I (OECD) US $620 million, category II (OPEC contributors) US $450 million and other developing countries about US $30 million. Indeed, the Fund's dependency on regular replenishments without a stable ratio of burden-sharing poses a basic structural problem for IFAD. However, this does not necessarily affect the Fund's liquidity, due to the time-lag between the commitments it makes and the actual disbursements of loans.

After little more than three years of operations, a definite evaluation of IFAD's performance would be premature. However, the new structure has not led to any major difficulties in the operations of the Fund. Concerning the function of IFAD as a model in the context of an evolving new international economic order, it has already had some impact on the concept of the United Nations Financing System for Science and Technology for Development that is under negotiation as a result of the United Nations Conference for Science and Technology for Development which took place in Vienna in 1979 (see also → United Nations Development Programme; → United Nations Institute for Training and Research; → Technology Transfer). But it remains to be seen if this model will have an impact as regards the developing States' demand for the democratization of international financial institutions.

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INTERNATIONAL HYDROGRAPHIC ORGANISATION

International cooperation in the field of hydrography has a long history, beginning with conferences held in Washington in 1899 and in St. Petersburg in 1908 and 1912. In 1919, 24 nations met in London for a Hydrographic Conference during which it was decided that a permanent body should be created. The resulting International Hydrographic Bureau was founded on June 21, 1921 by 19 maritime States, with headquarters in the Principality of Monaco.

In 1970, an inter-governmental convention of May 3, 1967 entered into force, changing the Bureau's name and legal status, and thus creating the International Hydrographic Organisation (IHO), with its headquarters permanently established in Monaco.

The IHO has legal personality, with privileges and immunities accorded (Convention, Art. XIII). The Convention is open for accession by any maritime State whose admission to the IHO is approved by two-thirds of the member governments. The IHO had a membership of 49 maritime States as of 1981.

The IHO is consultative and purely technical in nature. Its objectives are to bring about the coordination of the activities of national hydrographic offices, the greatest possible uniformity in nautical charts and documents, the promotion of reliable and efficient methods of carrying out and exploiting hydrographic surveys, and the development of the sciences in the field of hydrography and of the techniques employed in descriptive oceanography (Art. II; see also → Marine Research; → Marine Resources; → Maritime Law).

The IHO is comprised of the International Hydrographic Conference and the International Hydrographic Bureau. The Conference is composed of representatives of the member governments, each member having one vote. It meets in ordinary session every five years (Art. VI). The Bureau is composed of the three-member Directing Committee, which is elected by the Conference for a term of five years, and the technical and administrative staff (Arts. IX, X).

The expenses of the IHO are met from the ordinary annual contributions of member governments in accordance with a scale based on the tonnage of their fleets, as well as from donations, bequests, subsidies and other sources, with the approval of the Finance Committee (Art. XIV) (→ International Organizations, Financing and Budgeting).

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INTERNATIONAL LABOUR ORGANISATION

1. Historical Background

The International Labour Organisation was established in 1919 as part of the peace settlement following World War I (→ Peace Treaties after World War I), the original Constitution forming Part XIII of the → Versailles Peace Treaty. The → preamble to the Constitution stated the prem-

ises on which the organization was set up: Universal peace could be established only if it was based on social justice; conditions of labour existed which involved such injustice, hardship and privation as to imperil the peace and harmony of the world; the failure of any nation to adopt humane conditions of labour was an obstacle for other nations which desired to improve conditions in their own countries.

The idea that improvement of working conditions at the national level required international cooperation and coordination had found repeated expression in Europe in the 19th century as an outgrowth of the movement towards enactment of labour laws. Among proponents of this idea were Robert Owen in England and Jerome Blanqui and Daniel Legrand in France. Following proposals by the Swiss Government, the Government of Germany convened a conference in Berlin in 1890 to consider the conclusion of an international agreement on working conditions. This conference adopted resolutions on work in mines, weekly rest and the work of children, the young and women, but the resolutions were not followed up. In 1900 a group of scholars and administrators founded the International Association for the Legal Protection of Workers, with an office in Basle, which undertook the publication and study of labour legislation. On the basis of technical preparation by this Association, conferences were convened by the Swiss Government in Berne in 1905 and 1906. These led to the adoption of the first international labour conventions, which prohibited night work by women in Industry and the use of white phosphorus in the manufacture of matches. The further work of the Association was cut short by the outbreak of World War I. In the course of the war, it was realized that the contribution by the working masses to the war effort required that improvements in their conditions form part of the peace settlement, as demanded by a number of trade union conferences.

While the original ILO Constitution set out a series of principles for regulating labour conditions which all industrial communities should endeavour to apply, the essential thrust of the Constitution was to establish machinery through which international standards – in the form of conventions and recommendations – might be adopted (→ International Legislation). The first conference of the organization met in Washington in October 1919. Albert Thomas of France was appointed its first Director. In 1920 the ILO's headquarters were established in Geneva.

During World War II a reduced staff (which had moved to Montreal) worked on the social problems which would require priority attention in the post-war era. In 1944, the International Labour Conference, meeting in Philadelphia, adopted a → declaration (subsequently incorporated in the Constitution) to redefine the aims and purposes of the organization: The overall responsibility of the ILO was defined as promoting conditions in which all human beings, irrespective of race, creed or sex, are able to pursue their material well-being and their spiritual development in freedom and dignity, economic security and equal opportunity. In 1946, by agreement with the → United Nations, the ILO became a Specialized Agency (→ United Nations, Specialized Agencies).

Since World War II the ILO's history has been marked by the development of large-scale technical cooperation programmes, supplementing the standard-setting, research and information work, and by the large increase in membership consequent upon the attainment of independence by former colonial territories (→ Decolonization). In 1969 the ILO was awarded the Nobel Peace Prize.

2. Membership, Structure and Decision-Making Processes

In 1981 the ILO had 146 members. Any State which is a member of the UN may become a member of the ILO by formal acceptance of the obligations of the ILO Constitution. A State may also be admitted to membership by the International Labour Conference, by a vote concurred in by two-thirds of the delegates attending the session. A State may withdraw from membership upon giving two years' notice of its intention, subject to fulfilment of all financial obligations.

The principal organs of the ILO are the International Labour Conference, the Governing Body of the International Labour Office, and the International Labour Office.

(a) The International Labour Conference meets at least once a year, normally in June in Geneva. It is composed of four delegates from each member State, two representing the

government and one each representing employers and workers. Delegates may be accompanied by advisers. Employers' and workers' delegates and advisers are to be nominated in agreement with the most representative employers' and workers' organizations. With the exception of the Finance Committee (which consists exclusively of government representatives), the committees established by the Conference are tripartite in composition. In committees considering technical items a system of → weighted voting applies, giving each of the three groups equal voting strength (→ Voting Rules in International Conferences and Organizations). The Conference adopts the programme and budget of the organization, elects the Governing Body (with separate electoral colleges for the election of government, employer and worker members by delegates of these respective groups), adopts conventions, recommendations and resolutions, and undertakes a general debate on the reports of the Director-General and of the Governing Body. The budget for the two-year period 1982–1983 amounts to $230 million, and is assessed on member States on a scale patterned on that applied by the UN. Separate Conference sessions are held for consideration of questions concerning seafarers.

(b) The Governing Body consists of 28 government members, 14 employer members and 14 worker members. The ten States of chief industrial importance hold permanent seats. The remaining members of the Governing Body are elected once every three years at the Conference. The Governing Body meets three times a year. It establishes the agenda of the Conference, considers the draft programme and budget for submission to the Conference, establishes the programme of meetings, appoints the Director-General, and supervises the work of the Office. It reports to the Conference on its activities. Constitutional amendments now under consideration would include changes in the composition of the Governing Body (to increase its size and to replace the system of permanent seats for States of chief industrial importance by regional distribution of government seats) and in the manner of appointing the Director-General (to require approval of the Governing Body's decision by the Conference).

(c) The International Labour Office is the organization's secretariat (→ International Secretariat), with its headquarters in Geneva. The Office prepares studies and reports for the Conference, the Governing Body, and regional and specialized meetings; executes the decisions of the deliberative organs; carries out research; acts as a clearing house for information on social matters; and administers technical cooperation programmes. There are regional, area and branch offices in over 40 countries; the principal regional offices are in Addis Ababa (for Africa), Bangkok (for Asia and the Pacific) and Lima (for Latin America and the Caribbean). The total staff in mid-1981 was roughly 3000: 1350 in Geneva, over 400 in external offices, and 1200 on technical cooperation projects. The Director-General since 1974 has been Francis Blanchard of France.

(d) Other bodies. Regional conferences are held periodically to discuss questions of particular concern to the countries of the region and ILO activities there. Regional advisory committees for Africa, the Americas and Asia have also been set up to review problems prior to their consideration by regional conferences. Industrial committees deal with labour problems in particular sectors such as construction, chemical industries, coal mining, inland transport, iron and steel, metal trades, petroleum, plantations and textiles. All these bodies are tripartite in composition (governments, employers, workers). The Joint Maritime Commission, composed of shipowners' and seafarers' representatives, considers questions of employment at sea, particularly with a view to the preparation of maritime sessions of the International Labour Conference. There is also a Joint Committee on the Public Service.

Other tripartite or expert meetings are called to discuss the problems of particular categories of workers or particular social issues. There are also joint committees set up in collaboration with the → Food and Agriculture Organization of the United Nations, the → United Nations Educational, Scientific and Cultural Organization, the → World Health Organization and the → International Maritime Organization on certain matters of common concern, such as vocational training and occupational health.

A number of autonomous institutions are associated with the ILO, such as the International

Institute for Labour Studies (a centre for study and training) in Geneva, the International Social Security Association, the International Centre for Advanced Technical and Vocational Training in Turin, and various regional vocational training centres and labour administration centres in Africa and Latin America.

3. Activities

(a) International labour standards and supervision procedures

A substantial part of the ILO Constitution is devoted to the procedures for adopting conventions and recommendations and for supervising the implementation of such instruments. From 1919 to 1981, 156 conventions and 165 recommendations were adopted. Conventions are intended, through ratification, to bind member States. Recommendations are not open to ratification, but are aimed at providing guidance to policy, legislation and practice. Both conventions and recommendations have to be adopted by the International Labour Conference by a two-thirds majority vote. The normal procedure involves discussion, in committees of the Conference, at two succeeding sessions, on the basis of reports prepared by the Office and written comments from member States. The Constitution provides that in the framing of conventions allowance should be made for differing levels of development among member States. Beyond any expressly permitted flexibility, ILO Conventions may not be ratified subject to reservations (→ Treaties, Reservations).

The subjects dealt with in ILO instruments include trade union rights and collective bargaining, abolition of → forced labour, elimination of discrimination in employment (→ Discrimination against Individuals and Groups), equal pay, employment policy, wages, hours of work, rest and paid leave, employment of women, employment of children and young persons (→ Children, International Protection), occupational safety and health, social security, employment of seafarers, migrant workers, indigenous populations (→ Indigenous Populations, Protection), and labour administration.

Member States are required to bring newly adopted conventions and recommendations before the competent national authorities (normally, parliament) within a period of 12 to 18 months, for consideration of legislative or other action, and they must inform the ILO of the action taken. They may also be required by the Governing Body to report on the state of their law and practice with respect to unratified conventions and recommendations (→ Reporting Obligations in International Relations).

By September 1, 1981, 4933 ratifications had been registered in respect of ILO conventions. In 272 cases ratifications have been denounced; all but 33 of these denunciations have been linked to the ratification of a revised convention on the same subject (→ Treaties, Revision).

The obligations upon ratification are to make the provisions of the convention effective, to report periodically on its implementation, and to send copies of these reports to the most representative national organizations of employers and workers (→ International Obligations, Means to Secure Performance). Under decisions taken by the Governing Body in 1976, detailed reports on ratified conventions are requested at intervals of one, two or four years, depending on the subject-matter, the recency of the ratification and the nature of any problems of application noted by ILO supervisory bodies. Employers' and workers' organizations may submit comments concerning implementation of conventions. Reports are examined by the Committee of Experts on the Application of Conventions and Recommendations, which is composed of 18 members (mainly holders of high judicial or academic positions) appointed in their individual capacity by the Governing Body, on the nomination of the Director-General. The Committee meets annually. It makes an objective, technical examination of compliance with obligations. It issues a report containing observations on cases of non-compliance, in addition, it addresses unpublished direct requests to governments at the initial stages of the supervisory process, or to deal with matters of a technical or secondary character. The Committee also checks on compliance with the obligation to submit conventions and recommendations to the competent national authorities. When the Governing Body calls for reports on unratified conventions and on recommendations, the Committee makes a general sur-

vey of the state of their implementation; recent surveys have dealt with forced labour, migrant workers and minimum age for employment.

The Committee of Experts' reports are presented to the Conference, where they form the basis of discussion by representatives of governments, employers and workers in the Conference Committee on the Application of Conventions and Recommendations. The technical scrutiny by experts is thus supplemented by direct discussion among the interested parties to review and seek solutions to the problems encountered. The Conference Committee, in reporting to the plenary session of the Conference, highlights cases of special concern.

With the consent of a government, a representative of the Director-General may visit a State, under the "direct contacts" procedure, to discuss with the authorities and with employers' and workers' organizations means of eliminating difficulties in complying with the country's obligations in relation to ILO standards. This procedure may involve elements of technical assistance and of fact-finding (→ Fact-Finding and Inquiry). The results are reported to the supervisory bodies.

In addition to supervision of the implementation of ratified conventions on the basis of periodic reports, provision is made by the ILO Constitution for two types of contentious proceedings. A representation alleging non-observance of a ratified convention may be made by an employers' or workers' organization; it is examined by a tripartite committee of the Governing Body. A complaint may be made by another ratifying State or by a delegate to the Conference, or may be initiated by the Governing Body on its own motion. The Governing Body may refer a complaint to a commission of inquiry. These procedures have been invoked in recent years respecting allegations of discrimination in employment in Chile, Czechoslovakia and the Federal Republic of Germany, respecting conventions on trade union rights in cases concerning Argentina, Bolivia and Uruguay, and respecting maritime conventions in cases concerning Panama.

In the field of trade union rights, a special complaints procedure was established in 1950 by agreement between the UN and the ILO. It may be used even against States which have not ratified the relevant conventions. Complaints may be made by another government, by an international employers' or workers' organization having consultative status with the ILO, by an international employers' or workers' organization in respect of matters affecting affiliates, or by a national employers' or workers' organization directly affected. Complaints are considered by the Governing Body's Committee on Freedom of Association, which is composed of nine members (three representatives each of governments, employers and workers), with an independent chairman. Since 1951 the Committee has dealt with over a thousand cases. While the procedure is based mainly on written communications, direct-contacts missions are used to obtain information and to clarify issues, and the Committee may hear representatives of the parties. The Committee's primary function is to secure redress for violations of trade union rights. In the course of considering individual situations, it has also built up an extensive body of principles governing many aspects of freedom of association and the relation between civil liberties and trade union rights, which provides guidance and reinforces the preventive influence of the Committee's work. With the consent of the government concerned, complaints may be referred to the Fact-Finding and Conciliation Commission on Freedom of Association for more exhaustive investigation. This possibility has been used in a few instances, concerning Chile, Greece, Japan, Lesotho and United States/Puerto Rico.

In addition to conventions and recommendations, the ILO has adopted various other types of instruments. In 1964 the International Labour Conference adopted a declaration concerning the policy of → apartheid and a programme for the elimination of apartheid in labour matters in the Republic of South Africa. Developments in this field have since then been the subject of annual reports by the Director-General to the Conference. In 1981 the Conference adopted a supplementary declaration which provides for the establishment of a permanent Conference Committee on Apartheid to evaluate action by governments and employers' and workers' organizations of member States.

The World Employment Conference, convened

by the ILO in 1976, adopted a declaration and programme of action aimed at the satisfaction of the basic needs of each country's population and dealing also with international migration (→ Migration Movements), the use of appropriate technologies in → developing States and employment adjustment policies in developed States. In 1977 the Governing Body adopted a tripartite declaration of principles concerning multinational enterprises and social policy; a committee of the Governing Body is entrusted with the follow-up of this declaration, including examination of periodic reports from governments. The ILO has issued many model codes and guides of practice, particularly in the field of occupational safety and health.

The ILO has a general competence under its Constitution to undertake studies or investigations within its field of activities, even outside formally established procedures. For example, four missions were sent to Israel and the occupied Arab territories in the years 1978–1981 to examine the situation of workers in the → Israeli-occupied territories.

The ILO collaborates in the supervisory procedures of other international organizations. The Committee of Experts on the Application of Conventions and Recommendations has been entrusted with reporting to the → United Nations Economic and Social Council on progress in observance of provisions of the 1966 International Covenant on Economic, Social and Cultural Rights falling within the scope of ILO activities (→ Human Rights Covenants). It is also charged with the examination, for the → Council of Europe, of reports from parties to the European Code of Social Security. The Office provides information on a regular basis to the supervisory bodies established under the 1966 International Covenant on Civil and Political Rights, the 1965 Convention on the Elimination of All Forms of Racial Discrimination (→ Racial and Religious Discrimination) and the 1960 UNESCO Convention against Discrimination in Education. It participates in a consultative capacity in meetings of the Committee of Independent Experts for the → European Social Charter.

(*b*) *Technical cooperation*

The ILO executes extensive programmes of technical cooperation in fields such as employment planning and promotion, vocational training, management development, improvement of working conditions, social security, industrial relations, labour administration, workers' education and cooperatives. Expenditure on these activities in 1980 amounted to $100 million, distributed as follows: Africa, 43 per cent; Asia, 25 per cent; the Americas, 14 per cent; Middle East, 6 per cent; Europe, 2 per cent; inter-regional projects, 10 per cent. The ILO seeks to associate employers' and workers' organizations in the planning, execution and evaluation of technical cooperation activities (cf. → Economic and Technical Aid).

(*c*) *Dissemination of information, studies and research*

A major function of the ILO is to act as a clearing-house for information on social questions. In addition to the reports and records of the International Labour Conference and the Official Bulletin (decisions and conclusions of meetings, particulars of ratifications of conventions, and reports of the Committee on Freedom of Association), its periodical publications include the Legislative Series (texts of national labour and social security legislation), the International Labour Review (articles on labour and social problems), the Social and Labour Bulletin (information on current developments) and the Year Book of Labour Statistics. It also publishes many studies and manuals, reference volumes (such as the Encyclopaedia of Occupational Health and Safety) and workers' education materials. The ILO operates an international alert system to detect and give warning of potential hazards to workers' health.

Research forms a regular part of technical programmes; it is action-oriented, particularly to provide a basis for the preparation of conventions and recommendations and other forms of policy formulation on social issues and support to technical cooperation activities. Research into employment problems has been given special emphasis under the World Employment Programme launched in 1969.

ILO programmes pursue three main ends: the promotion of employment, the improvement of conditions of work and life, and the development of social institutions. The preoccupation underlying these activities is to further the realization of

human rights such as the right to work, the right to free choice of employment, the right to equality of opportunity and treatment, the right to freedom of association, the right to fair and safe working conditions, the right to social security, and the protection of vulnerable groups such as children and young persons and migrant workers. ILO programmes involve a combination of the means of action mentioned above: information and research to identify and analyse problems; standards to orient policy; and operational activities drawing on both these sources to assist member States to work towards the organization's objectives.

4. General Assessment

The ILO is a normative organization. By its Constitution it is committed to the establishment of standards to regulate labour conditions. It is the only international agency where standard-setting, according to well established procedures, forms a regular part of the work. This has enabled the organization over the years to build up a comprehensive body of instruments and to adapt it to changing conditions. A second distinctive feature is the tripartite structure of the organization's deliberative bodies. The association of representatives of employers and workers in the work of the ILO enhances the authority of its decisions and their impact on policy discussions at the national level. Tripartition in the ILO has also helped to foster habits of consultation between governments and the social partners in member States. Thirdly, the ILO has established far-reaching supervisory procedures, involving both regular monitoring of compliance with standards and means of investigating complaints; the objectivity and impartiality of these procedures are held in high regard. These various factors have permitted the organization to exercise considerable influence on social policy and legislation and frequently to contribute to the acceptance of new concepts, for example, in such matters as the employment relationship, trade union rights, equal pay or social security.

The ILO's influence has flowed not only from its normative work, but also from its technical cooperation activities and its clearing-house and research functions. As has been emphasized, these various forms of action are interrelated and mutually supporting.

A tradition of an active secretariat role was established by the first Director of the International Labour Office, Albert Thomas, and is still followed. It is normal, for example, for the Office to present its analysis and suggestions to the Governing Body on items under consideration, and to provide technical analyses in support of the work of supervisory bodies. Such practices facilitate decision-making processes and consistency in decisions.

While significant social progress has been made in many countries in the 60 years of the ILO's existence, enormous problems remain in the way of overcoming poverty and social injustice. Widespread unemployment and underemployment characterize the Third World; unemployment has also assumed alarming proportions in developed market economy countries. In a situation of world economic recession, international tension, instability and armed conflict in many countries, social welfare stands at risk. Rapid changes in technology, social structures and international economic relations require a pooling of experience and international solidarity and cooperation. The ILO Medium-Term Plan for 1982–1987 recognizes the magnitude of this challenge and the role incumbent upon the ILO as a forum of world-wide social debate. It remains the special responsibility of the ILO to ensure that the social objectives of development are borne fully in mind in the shaping of national and international economic policies.

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KLAUS THEODOR SAMSON

INTERNATIONAL LABOUR ORGANISATION ADMINISTRATIVE TRIBUNAL

1. Historical Background; Composition

The International Labour Organisation Administrative Tribunal was established in 1947 as the successor tribunal to the League of Nations Administrative Tribunal, which had been founded in 1927 as the first such body to institute independent judicial decision-making for the resolution of disputes between international organizations and their employees (see the Resolution adopted on April 18, 1946 by the last session of the Assembly of the → League of Nations; → Civil Service, International; → Administrative Tribunals, Boards and Commissions in International Organizations). The Statute adopted in 1947 was amended in 1949. The Rules of Court, also adopted in 1947, were last amended in 1972.

Every year the ILO Administrative Tribunal holds two sessions. Under Art. III of its Statute, the Tribunal consists of three judges and three deputy judges, each of a different nationality. A meeting is composed of three members, one of whom must be a judge. As a rule, judges come from different legal backgrounds, thus ensuring the international character of the institution. Judges are elected by the Conference of the → International Labour Organisation for terms of three years. They are normally re-elected.

2. Competences

The Tribunal is only authorized to pass judgment; it is not competent to deliver → advisory opinions. Thus, when the ILO Director-General and the Staff Union asked the Tribunal for an opinion concerning certain matters related to the fixing of the salaries of general service staff in Geneva, the judges stressed that they had no power to give such an opinion as the Tribunal, and that they would do so in their personal capacity only.

(*a*) Ratione personae

Defendants before the Tribunal may be the ILO as well as any other inter-governmental organization which has made a declaration recognizing the Tribunal's jurisdiction and whose application has been approved by the ILO Governing Body. At the present time no less than 20 organizations, both world-wide and regional, have accepted the Tribunal as a final legal remedy against acts of their administrative organs, including the → World Health Organization, the → United Nations Educational, Scientific and Cultural Organization, the → International Telecommunication Union (ITU) and the → Food and Agriculture Organization of the United Nations.

Any current or former staff member of the organization concerned may be a complainant before the Tribunal. Moreover, any person on whom the official's rights have devolved on his death and any person whose entitlements under the internal law and rules arose as a result of the death of the official may file a complaint. In addition, the parties to a contract which provide for the competence of the Tribunal in case of disputes concerning its execution may be parties before the Tribunal, although such a case has not yet arisen.

(*b*) Ratione materiae

The Tribunal can only entertain complaints alleging non-observance of the terms of the contract

of employment and of the internal law and rules (e.g. staff regulations and rules) applicable to the case (→ International Organizations, Internal Law and Rules). However, in considering the case, the Tribunal does not confine itself to interpreting the contracts and the staff regulations and rules. It also applies → general principles of law which are deemed to be part of the conditions of employment. This approach has led the Tribunal not only to inquire whether the staff rules are in conformity with the regulations on which they are based, but also to examine whether the staff regulations and rules set up by any organ other than the general conference comply with the general principles of law as recognized by it. This practice is in turn limited because the validity of such regulations and rules can only be questioned in relation to their application in a given set of circumstances.

According to Art. II(7) of its Statute, the Tribunal has jurisdiction to decide on its own competence.

3. Procedural Requirements

A complaint before the Tribunal is admissible only if it challenges a specific decision affecting the complainant, if it is submitted within a certain time-limit and if the internal legal remedies available to the claimant have been previously exhausted (Statute, Art. VII).

Complaints concerning the validity of internal law and rules as such are inadmissible. The dispute must concern their application in concrete circumstances to one or more officials. In addition, it must be claimed that the decision of the organization had a measurable adverse impact on the rights of complainant; no abstract complaint can be placed before the Tribunal.

Practically all staff regulations and rules of international organizations provide for some sort of board or commission designed to find facts and to attempt settlement of disputes within the organization. These bodies are normally part of the secretariat and generally are composed of representatives of the administration and of the staff. To permit the normal functioning of such boards, no complaint can be heard by the Tribunal until the organization's internal remedies have been exhausted. This exhaustion requirement also reduces the number of complaints reaching the Tribunal.

The Tribunal may only entertain complaints which have been timely filed. A complaint has to filed within 90 days from the time the complainant is notified of the final decision of the executive head of the organization. Silence on the part of the secretariat or the appeals board of the organization for more than 60 days is deemed to be a decision rejecting the claim.

In the overwhelming majority of cases, the Tribunal does not hold public sessions with oral presentation of cases. The detailed procedure is set out in the Tribunal's Rules.

4. Applicable Law

Basically, the law applied by the Tribunal consists of the staff regulations and rules of the organization concerned and the provisions of the contract involved. In addition, the general principles of administrative law as stated by the Tribunal are a main source of law. Thus, the right to be heard, the concept of acquired rights, the principles of → good faith, equality of treatment, justified interests of the organization balanced against the measure complained of, the rule of → estoppel, and the prohibition of arbitrary decisions and of retroactive application of new rules are among the *rationes decidendi* of the Tribunal's judgments.

By contrast, the Tribunal will never apply national law (→ International Law and Municipal Law). Nor will it apply the internal law and rules of another organization, even by analogy, unless they have been declared applicable by the rules and regulations of the organization concerned.

5. Decisions; Relief

According to Art. VIII of its Statute, if the Tribunal finds that a complaint is well-founded, it may rescind the decision contested or order the specific performance of the obligation relied upon (→ International Organizations, Legal Remedies against Acts of Organs). If such rescission or specific performance is impossible or inadvisable, the Tribunal may also award compensation to the complainant. In addition, the complainant whose complaint has been declared well-founded or has raised issues of general interest may be granted legal costs.

In recent years, moreover, the Tribunal has developed a body of case-law concerning compensation for injury. First, where an organization's decision is rescinded, the complainant may receive additional compensation for moral prejudice, if the wrong suffered is serious. Second, in the case of a well-founded complaint where rescission is impossible or inadvisable, damages are allowed on an *ex aequo et bono* basis. Thirdly, even when the complaint is rejected as ill-founded, damages may be granted if an especially grave moral prejudice has been suffered by the complainant.

The Tribunal has drawn a fundamental distinction between cases which involve application of rules or regulations leaving no measure of discretion to the secretariat's head and those which concern the implementation of rules or regulations leaving wide discretion in their interpretation and application. While disputes concerning the first category raise only legal problems which the Tribunal is in as good a position as a Director-General to decide *de novo*, disputes of the second category involve a measure of evaluation which the Tribunal deems a Director-General better able to make. Hence, the Tribunal only will fully examine the validity of decisions of the first type. For those of the second type, it will set aside the challenged decision only on the following grounds: The decision was taken without authority; it violated a rule of form or procedure; it was based on an error of fact or law; it involved disregard of essential facts; it showed an abuse of authority; or it was based on mistaken conclusions drawn from the facts. In particular rules or regulations which do not confer to officials any specific right belong to the second category, and are thus subject to the Tribunal's more limited scope of review.

6. *Review of Decisions*

A distinction should be made between the revision of a decision by the organ which took it and the appeal of a decision of a different organ.

Although no provision of its Statute provides for the Tribunal's revision of its own judgments, it has in practice declared admissible complaints which sought reconsideration of a judgment. It has, however, rejected all such requests on the merits. Granting such review will always remain exceptional because the Tribunal's judgments are final and binding on the parties. Therefore, grounds for revision can only be those which could have affected the decision reached, such as errors in the establishment of facts, failure to decide on part of a claim and discovery of facts which were not known to the complainant at the time of filing the complaint.

In contrast to the situation in the → United Nations Administrative Tribunal, only the Governing Body of the ILO and the equivalent boards of the other organizations subject to the Tribunal's jurisdiction are allowed to challenge the validity of a judgment. That body may ask the → International Court of Justice (ICJ) to deliver an advisory opinion as to whether the Tribunal wrongly asserted its competence or whether the judgment concerned was vitiated by a fundamental fault of procedure. In an exception to the normal rule, the ICJ advisory opinion is binding on the organization; this is because neither international organizations nor officials have standing before the ICJ (→ Standing before International Courts and Tribunals). This review procedure, however, is not really one of appeal; it exists merely to ensure that the Tribunal does not violate its Statute and rules.

7. *Evaluation*

The 480 judgments delivered as of January 1982 have concerned practically all aspects of the employment relationship, from disagreements over an appointment having taken place to disputes concerning cessation of service. The most frequent complaints concern non-renewal of appointment. The Tribunal has consistently maintained that officials have no general right to renewal, but that renewal decisions should be made in the proper way and may not be arbitrary. In particular, pressures from governments concerning non-renewals are unacceptable bases for such decisions. Most judgments involve application of the relevant internal law and of general principles of administrative law to individual situations.

With respect to issues arising both in the ILO Administrative Tribunal and the UN Administrative Tribunal, and attempts at harmonizing the jurisprudence of the two Tribunals, see → United Nations, Administrative Tribunal.

The ILO Tribunal has become an essential mechanism for officials' protection against arbitrary decisions. Its most significant contribution to international law has been the development of the general principles of law as a source of the law of nations (→ Sources of International Law). This has been possible because the Tribunal's activity is very similar to that of administrative courts and labour boards in national contexts.

ILO, Statute and Rules of Court of the Administrative Tribunal.
Judgements of the ILO Administrative Tribunal.

J. BALLALOUD, Le Tribunal administratif de l'Organisation internationale du travail et sa jurisprudence (1957).

J. LEMOINE, Jurisprudence du Tribunal administratif de l'Organisation internationale du travail, AFDI, Vol. 6 (1960)–Vol. 14 (1968).

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F. WOLF, Le Tribunal administratif de l'Organisation internationale du travail. Etudes et documents du Conseil d'Etat. Vol. 31 (1969) 33–72.

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BLAISE KNAPP

INTERNATIONAL LEGISLATION

A. Various Meanings of the Term

In logic, the notion of international legislation should mean such law-making among → States or inter-governmental organizations which in its basic features remains identical with legislation in a State. Since the same term is used here, legislation in the international community should display structural and procedural characteristics that are not different from national (domestic) legislation. Obviously, certain adaptations cannot be excluded. They may be dictated by the dissimilarities between national and international communities. But apart from this, legislation must essentially mean one and the same process, whether it takes place on the national or international plane.

Nevertheless, neither diplomatic practice (→ Diplomacy) nor legal writings follow the strict meaning of legislation when applied to → international relations. They use the term in several and often conflicting senses. Consequently, there is some confusion surrounding the term.

Manley O. Hudson edited a collection of treaties entitled International Legislation, but his definition was broad enough to cover various sources and forms of law-making: "The term *international legislation* would seem to describe quite usefully both the process and the product of the conscious effort to make additions to, or changes in, the law of nations" (Vol. I, p. xiii). Writers employ the term to describe such divergent phenomena as the making of → customary international law (which is a clear perversion of the concept of legislation); conclusion of → treaties; their amendment (→ Treaties, Revision) by a majority with the effect that a dissenting party is either bound by the revised text or ceases to be a party at all; adoption of binding decisions by international bodies; other than judicial or arbitral, concerning specific situations or disputes; and enactment of legal rules for States by such bodies. It is only the last-named which reflects the proper sense of legislation.

B. Law-Making Treaties

One of the current meanings of international legislation is an identification of it with law-making treaties (→ Sources of International Law; → Treaties, Multilateral). The title and contents of Hudson's collection referred to above suggest that international legislation consists in the making of multilateral treaties on matters of general interest. Several writers have espoused this attitude, among them A. D. McNair (later Lord McNair) and P. C. Jessup. In the latter's view, the term "is now commonly used to describe many multipartite treaties which lay down rules by which States agree to be bound" (Jessup, p. 203). In his dissenting opinion in the South West Africa Cases, Second Phase, before the → International Court of Justice, Judge K. Tanaka spoke of "legislation by convention" (ICJ Reports 1966, at p. 292; → South West Africa/Namibia (Advisory Opinions and Judgments)).

In the international community, the law-making treaty plays a role that is largely similar to that of

the statutory enactment in the internal sphere of a State. What is taken into account here is the rule or rules resulting from the treaty. But this is exactly the weak point of the concept. When a particular method of law creation is to be defined and classified, whatever the rubric, emphasis must be put on the process itself and its procedural features. The effect of the process, i.e. the legal rule or rules, cannot serve as a criterion of distinction, for the effect (the result) is always the same, namely the law, irrespective of the method used. Concentration, therefore, must be on the process, not on its product.

C. Law-Making by Majority Decision

Some writers limit the notion of international legislation to cases where the rule can acquire binding force for all States concerned, though it has been agreed upon or adopted only by a majority of them. "We shall define international legislation as the enactment of international law by formal action of less-than-unanimous consent" (P. B. Potter, An Introduction to the Study of International Organization, 5th ed. (1948) p. 209). And H. Kelsen wrote:

> "if the norm is adopted by a majority-vote decision of an organ, composed of representatives of all parties to the treaty establishing the organ, and especially by the majority-vote decision of an organ composed only of representatives of some of the parties to this treaty, the creation of the norm assumes the character of legislation" (Principles of International Law (1952), p. 366).

Here the criterion for legislation is not the law-making effect pure and simple, i.e. the mere fact that a law-making treaty has been negotiated and concluded (see section B *supra*), but rather the law-making effect that has been brought about by virtue of a majority decision. That decision can take two forms. The first consists of States individually consenting to the rule, and when their ratifications (or other acts of approval) reach the required number, the rule becomes binding for all, and not exclusively, for those consenting (→ Treaties, Conclusion and Entry into Force). The second form is an international organization's or organ's law-making resolution which enters into force for all members without the necessity of any subsequent ratification or similar act by individual States (→ International Organizations, Resolutions).

1. Revision or Amendment of Treaties

The beginning of legislative procedures in the revision or amendment of treaties can be traced back to the telegraph and postal unions (→ International Telecommunication Union (ITU); → Universal Postal Union), and particularly to the Paris Postal Convention of June 1, 1878. It provided that any revised postal convention would abrogate all provisions of previous conventions which could not be reconciled with the new instrument. Non-ratifying States would cease to be members of the Union. Further, the Paris Convention introduced a simplified procedure for the amendment of the conventions between postal congresses. With the exception of the most important provisions, amendments became effective upon approval of two-thirds of the members. Disapproving States continued to be bound by the former provisions: here the rule that no State can incur obligations against its will was still respected.

Both the Covenant of the → League of Nations and the Constitution of the → International Labour Organisation dispensed with the requirement of unanimity for the entry into force of amendments (Arts. 26 and 422 respectively of the → Versailles Peace Treaty; → International Organizations, General Aspects; → Voting Rules in International Conferences and Organizations). When an amendment became effective, a dissenting State would automatically lose League membership. In the ILO the consequence was similar, though its Constitution was silent on that point. The International Commission of Aerial Navigation set up under the Paris Convention (1919) (→ Air Law) was competent to amend annexes A to G to the Convention by three-quarters of the total possible votes; such amendments were binding for all the parties (Art. 34).

These trends came to full fruition in 1945 and thereafter. Many constitutions of international organizations, especially the universal ones, and some other treaties are nowadays amended by a two-stage procedure. First, the organization (through its organ) adopts the amendment by a majority vote. Second, the amendment enters into force for all members (parties) once it is ratified

(accepted, adhered to, etc.) by the required majority. This system is exemplified in the → United Nations Charter (Arts. 108 and 109); constitutions of several → United Nations Specialized Agencies (the ILO, Art. 36; the → International Bank for Reconstruction and Development, Art. 8, with some exceptions; the → International Monetary Fund, Art. XVII, with some exceptions; the → World Health Organization, Art. 73; the → United Nations Educational, Scientific and Cultural Organization, Art. 13; the → World Meteorological Organization, Art. 28(c)); and the → International Atomic Energy Agency (Art. 18(c)); treaties establishing other organizations, e.g. the League of Arab States (Art. 19; → Arab States, League of), the → Council of Europe (some amendments under Arts. 20 and 41), the → Intergovernmental Committee for Migration (Art. 29(2)) and the (1959) International Wheat Agreement (Art. 36(4); → Commodities, International Regulation of Production and Trade). In some of these organizations, the procedure is applicable in a selective way: There are provisions which are amended in a different manner (see *infra*).

A variation on the foregoing system consists in the absence of the element of obligation for the dissenter: He is not bound by the amendment. But if he persists in his refusal to accept it, his participation in the system set up by the treaty will automatically terminate because the revised or amended text replaces the earlier one. Postal conventions and the Berne railway conventions (the International Convention concerning the Carriage of Passengers and Baggage by Rail (CIV) and the International Convention concerning the Carriage of Goods by Rail (CIM); → Railway Transport, International Regulation) are cases in point. Equally, States which do not accept certain (important) amendments to the → Chicago Convention (Art. 94(b)) or the Convention on the Inter-governmental Maritime Consultative Organization (Art. 52; → International Maritime Organization) cease to be parties after the amendments have come into force.

Still another variation is suspension from treaty rights and obligations of a party which does not accept the amendment, e.g. Art. 43(5) of the International Sugar Agreement (1959).

Finally, there is a procedure which combines the majority decision with the regulative act of the organization. The latter deprives the amendment procedure of its contractual nature and thereby brings it closer to genuine legislation. The solutions discussed so far rely on the contractual form, though they limit its relevance to the majority of the States concerned. The procedure now considered is different: The amendment takes effect forthwith by virtue of the majority-vote resolution of the competent international organ, without requiring the subsequent ratification or acceptance of the majority of individual members. In the → Food and Agriculture Organization this procedure covers any "amendment not involving new obligations for Member Nations or Associate Members", unless the resolution provides for individual acceptances (Constitution, Art. 20(2)). In UNESCO this procedure applies to amendments which do not involve "fundamental alterations in the aims of the Organization or new obligations for the Member States" (Constitution, Art. 13(1)). Protocol No. III of October 23, 1954 to the Brussels Treaty (1948; → Western European Union) and regulations of the ITU are amended through appropriate resolutions. Further, some provisions of various other treaties can equally be amended in this manner, e.g. the Berne railway conventions (between conferences), the Statute of the Council of Europe (Arts. 23 to 35, 38 and 39), the annex to the International Convention for the Northwest Atlantic Fisheries (Convention of February 8, 1949, Art. IV(2); → Fisheries, International Regulation), and the Convention Establishing the → European Free Trade Association (Arts. 5, 10, 13 and 14). It is worthwhile noting that this system had already been adopted for the → International Bureau of Education (Statutes of 1929, Art. 16). On the other hand, the → European Communities admit it only exceptionally (ECSC Treaty, Art. 95, paras. 3 and 4, EEC Treaty, Art. 33, para. 8 and Art. 38, para. 3; Euratom Treaty, Art. 76 and some provisions of the annexes).

2. Law-Making and Opting-Out

The core of the type of international legislation falling under the rubric of "opting-out" (also called "contracting-out") is that the international organization or organ is empowered by its con-

stitution to make law through majority decisions, but members retain the right to reject the regulations or to make reservations thereto (→ Treaties, Reservations). These rights may be exercised within a specified period of time; if a State fails to use them, it is automatically bound by the enactment. Sometimes the freedom to dissent and thus to remain beyond the regulative effect of the resolution is actually (though not legally) limited by reason of the resulting disadvantages. In the case of the WHO International Sanitary Regulations, the freedom to make reservations depended on the consent of the legislating organization.

The system of opting-out as applied to international legislation has its origin in the Chicago Convention. The Council of the → International Civil Aviation Organization adopts international standards on the safety, regularity and efficiency of air navigation (Art. 37), but not on its policies or economy. The Council designates them as annexes to the Chicago Convention (Art. 54(1); recommended practices, i.e. non-binding instruments, are also thus designated). The Council adopts these standards by a two-thirds vote at a meeting called for that purpose. The standards are then submitted to the member States. If a majority of them registers disapproval with the Council, the annex in question does not go into effect. Otherwise, the standards enter into force within three months after their submission to member States or at the end of such longer period as the Council may prescribe (Art. 90(a)). Amendments to standards are adopted in the same way. Any member which disagrees with the enactment (including amendments to it) has the right to reject the annex wholly or in part within the prescribed time-limit. It may be contended, though the matter is debatable, that some rules are established definitively by the ICAO, i.e. no rejection or departures from them are allowed (e.g. rules on flight and manoeuvre of aircraft over the → high seas, Art. 12; and possibly rules on nationality of → aircraft operated by international agencies, Art. 71). In the case of certain regulations, members who avail themselves of the right to opt out run the risk of being excluded from or limited in participation in international navigation (Arts. 39 to 42). Actually, reservations are rare and do not concern basic issues.

In the World Health Organization the Assembly, by majority vote, adopts regulations on various matters relating to public health (Constitution, Art. 21; see also → Public Health, International Cooperation). In particular, it has enacted the International Sanitary Regulations (1951, thereafter amended). For the States to which they apply, they replaced several often overlapping sanitary conventions and thus introduced uniform rules on quarantine and other means of preventing the spread of diseases (→ Unification and Harmonization of Laws). Within the period indicated in the enactment, members are allowed to reject the regulations or to formulate their reservations thereto. If they do neither, the regulations, as voted by WHO, become binding on them. The International Sanitary Regulations introduced an innovation into the procedure of making reservations: The validity of any reservation depends on the acceptance by the Assembly. If that organ objects and the member does not withdraw the reservation, the Regulations do not enter into force with respect to that member.

The Congress of the World Meteorological Organization, by a two-thirds majority, adopts standard meteorological practices and procedures which are binding on members (in contrast to recommended meteorological practices, see Art. 7(d) of the constitutive Convention and Res. 17 of the 2nd Congress). But the duty to implement them is not absolute: members "shall do their utmost" in this respect. If a member finds it impracticable, provisionally or ultimately, to give effect to a standard, he must inform the WMO accordingly (Art. 8).

The Commission established under the North-East Atlantic Fisheries Convention (1959) has the power to regulate various technical questions by a two-thirds majority. Any member State has the right to opt out by filing its objection (Arts. 7 and 8).

Under the Annex to the IMCO Convention on Facilitation of International Maritime Traffic (1965), any State can duly notify IMCO (now the International Maritime Organization) that it will not comply with a standard; → notification is made after the standard has entered into force. This procedure also applies to amendments to the Convention's annex (Arts. VII and VIII). Revision or amendment of the Convention itself, if

accepted by two-thirds of the parties, is binding for all, with the exception of governments which rejected the revision or amendment before its entry into force (Art. IX).

3. Internal Law of International Organizations

There is no agreement among writers as to how to define this type of law. Some conceive it so broadly as to include parts of the constitutive treaty. Another view, though less extensive, still goes very far: The notion covers any enactments made by the organization, whoever the addressees and whatever the regulated conduct. Thus, to P. Cahier, regulations referred to in subsection 2 *supra* and the law made by the European Communities are internal law. R. Bernhardt does not agree with such extension; in his opinion the law relating to the behaviour of States in the organization or in their relations to it could be regarded as part of the internal law (→ International Organizations, Internal Law and Rules).

The common denominator is enactment by the organization of rules concerned with its structure, functioning, or procedure. While some regard these rules as only part of the internal law, others would limit the notion of internal law to them alone. According to the narrow concept, the internal law of an international organization is law enacted by it which regulates the activities of bodies and persons acting on behalf of, or of staff employed by, the organization, the setting up of subsidiary organs or other machinery which the organization needs in order to function, and, generally the conduct of business assigned to the organization. This approach implies that the internal law is addressed not to States but to organs, representatives, or employees of the organization. Nevertheless, such law often regulates the conduct of States and, consequently, constitutes a source of their rights and duties, whenever States act within the framework of the organization, i.e. when they move in the area covered by the internal law. The application or non-application of a rule of internal law of the organization is often of far-reaching importance to the political interests of States and exercises an influence on the merits of a position adopted by a member.

The main categories of internal rules made by contemporary international organizations are rules of procedure, financial regulations, regulations concerning the staff and personnel of the organization, rules enacted to implement the tasks and functions specified by the constituent treaty (e.g. regulations to give effect to Art. 102 of the UN Charter; → Treaties, Registration and Publication), rules governing the establishment and functioning of new organs or autonomous bodies, and regulations relating to administrative matters, e.g. headquarters regulations, etc. All these rules constitute a vast and varied body of law which continues to grow. Its significance as part of the law of international organizations and international law in general is far from negligible. As to its substance, most of the law contained in internal regulations is new in comparison with the provisions of the constitutions of the organizations concerned.

The internal law is enacted by virtue of majority decisions, though in some organizations the constituent treaty still requires unanimity (e.g. the convention establishing the → Organisation for Economic Co-operation and Development, Art. 6(1), and the Statute of the → Council for Mutual Economic Assistance, Art. IV (2), (3)).

Most constitutions of international organizations contain explicit authorization for the making of internal law on at least some subjects. But such authorization is not indispensable, because the power to enact internal law (in the narrow sense of the term) can be implied (→ International Organizations, Implied Powers). Some writers go even further and contend that it is not necessary to imply the power to make internal regulations, for such competence is now possessed by any and every international organization by virtue of customary law. A custom is said to have developed in particular in connection with the adoption of rules of procedure by international conferences (Kolasa), which confers on international bodies the power to make their internal law irrespective of the existence of any enabling clauses in their constituent treaties (Cahier).

4. Law-Making by the European Communities

The law made by the European Communities is called secondary Community or → European law, to distinguish it from primary law, i.e. that of the treaties whereby the Communities were set up and developed. Municipal courts, the → Court of Justice of the European Communities and many

writers have drawn a distinction between Community law and → international law. This raises the question of whether the making of secondary European law is a manifestation of international legislation.

Though the legislative power in the Communities remains divided between the Council and the Commission, the centre of gravity in the law-making process rests with the Council. The Council is an inter-governmental organ, and this very feature makes it possible to consider the law-making activity of the communities under the rubric of international legislation. However, some would rather speak here of supranational legislation (see → Supranational Organizations).

Be that as it may, a discussion of international legislation would not be complete without a mention of the European Communities and the model they have created. A comparison with the types of law-making discussed in sections 1 to 3 above easily shows that the European Communities are today the only organizations which have been equipped with broad and extensive powers of legislation in regard to member States and other addressees, including legal and natural persons (→ Individuals in International Law; → Subjects of International Law).

According to the constituent treaties, some enactments had or still have to be adopted by unanimity. But the preponderant rule is that of majority decisions. The fact that unanimous agreement is sought whenever very important interests are at stake does not change the constitutional position (cf. the so-called Luxembourg Agreement of 1966).

There are some differences in scope between the legislative activities of the respective Communities. In the → European Coal and Steel Community the law was largely formulated in the constitutive treaty, and the enactments of the ECSC for the most part implemented and developed what had already been agreed upon by the member States. The → European Economic Community had to create a different body of law. The Treaty of Rome did not provide equally detailed rules for all the subjects that required unified regulation. The activity of the EEC encompasses not merely one sector, however important, of production and trade, but the whole economic life of the member countries. Hence the regulative powers of the EEC are wider than those of the ECSC. On the other hand, legislation is not an important function among the activities of the → European Atomic Energy Community.

The law-making acts of the Communities are the (general) decision in the ECSC and the regulation (*règlement*) in the EEC and Euratom (in these two organizations, decisions are also binding, but they concern individual cases only). In addition, the recommendation in the ECSC and the directive in the EEC and Euratom could fall under the heading of legislation in so far as the general and abstract rules which they proclaim are binding as to the results to be achieved (ECSC Treaty, Art. 14; EEC Treaty, Art. 189; Euratom Treaty, Art. 161).

D. Enactment of Law by International Organizations

The two meanings of international legislation explained in sections B and C above, and particularly the variations of the procedural approach (section C), do not exhaust this subject. Another understanding of international legislation is its identification with law-making by inter-governmental organizations through their resolutions.

Apart from making internal law in the narrow sense of the term (section C. 3 *supra*), the power of an international organization to legislate for States must be explicit and not implicit, i.e. it must follow from an unequivocal authorization in the constituent treaty. The international community of States is not a "super-State", and any law-making by a common organ of States requires their consent (→ International Legal Community; → Sovereignty). There is, of course, no obstacle to this consent being given in advance for a whole range of matters.

The act of the organization constitutes law-making if it lays down general and abstract rules of conduct which are binding on their addressees. Decisions of the → United Nations Security Council under Chapter VII of the UN Charter, though binding, are not law-making because they are individualized and/or specific. Nor are resolutions of the → United Nations General Assembly, even if their normative language is general and abstract, for they are not binding.

Enactment of law by international organizations is understood here as a process different

from the conclusion of treaties. It is another matter that such enactment must be based on a treaty. The law-making act of the organization is not governed by the law of treaties. It is not a contractual instrument in which the members of the organization appear as parties. The organization is the author of the act and its adoption, entry into force, validity, application, effects, modification and termination are regulated by the organization's law, in particular by its constitution.

Most of the categories of legislation enumerated in section C *supra* also fall under the present heading; except for the revision or amendment of treaties, particularly where contractual procedures are decisive (ratification by individual members, etc.), they are law made by the organization. But in the sense of international legislation as analysed in this section, emphasis is not put on voting rules, majority or otherwise. The relevant criterion is different: It is the existence of the law-making act of the organization which has to be distinguished from a treaty. How the act is adopted is not decisive: It could be by unanimity if the constitution so requires.

It is true that the consent principle is largely present in the enactment of law by international organizations. The opting-out system (see section C. 2 *supra*) combines law-making through a unilateral act of the organ with certain guarantees for a dissenter. Indeed, this system has been called contracting-out; however, conclusion of treaties involves the principle of contracting-in, not merely contracting-out. Identification with treaties is even more tempting where unanimity becomes obligatory, e.g. in the now defunct Organisation for European Economic Co-operation, which adopted the important Code of Liberalization, and its successor, the OECD (Arts. 5 to 7). It can be maintained that unanimous law-making resolutions are agreements concluded according to special procedures. Yet the contrary can also be argued: unanimous enactments are not contractual since they are not governed by the law of treaties.

Law-making acts of international organizations are a source of international law distinct from treaties. They are a new source of that law. The international community has no legislature. But in various organizations one may observe the beginnings of law-making through their resolutions. With the exception of the European Communities, these beginnings are definitely modest and there are no signs of any change in this regard. The process is noteworthy, however, for among the various manifestations described above, it stands the closest to genuine legislation.

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INTERNATIONAL MARITIME ORGANIZATION

1. Name of the Organization

When the Organization was established in 1958, its original name was Inter-Governmental Maritime Consultative Organization (IMCO); this name was changed in May 1982 to International Maritime Organization (IMO) due to the changes which had meanwhile occurred in the work programme.

2. Historical Background

During World War II, a United Maritime Authority was established by the Allied Powers. After the cessation of hostilities, this body was succeeded by a temporary United Maritime Consultative Council which met in Washington in October 1946 and approved a draft convention for recommendation to member governments for the establishment of a permanent Inter-Governmental Maritime Consultative Organization. By an agreement of October 30, 1946 (which came into force on April 23, 1947), a Provisional Maritime Consultative Council was established. Pending the establishment of a permanent organization, this council was:

"(i) to provide machinery for co-operation among Governments in the field of Governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation;
(ii) to encourage the removal of all forms of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination;
(iii) to provide for the consideration by the Council of any shipping problems of an international character involving matters of general principle that may be referred to the Council by the United Nations . . .;
(iv) to provide for the exchange of information among Governments on matters under consideration by the Council."

A United Nations Maritime Conference was held at Geneva in February/March 1948, with 35 States (not including the Soviet Union) represented. At this conference, a Convention was adopted with objects similar to those of the agreement of October 30, 1946, but with the added objective of encouraging the consideration of matters concerning unfair restrictive practices by shipping concerns (→ Antitrust Law, International). Para. (iii) (now para. (d)) was reworded to include matters referred to the organization "by any organ or specialized agency of the United Nations" (→ United Nations, Specialized Agencies).

The Convention came into effect on March 17, 1958, after its ratification by twenty-one States, of which at least seven had one million gross tons of shipping each (cf. Art. 60 of the Convention). The first constituent Assembly of IMCO met in London, the headquarters of the organization, from January 6 to 19, 1959. This meeting confirmed the status of IMCO as a UN specialized agency, as approved by the → United Nations General Assembly on November 18, 1948.

IMO has an Assembly (Arts. 13 to 16 of the Convention), in which all member States are

represented, which meets once every two years and is the principal policy-making body. By the summer of 1981 the Organization had 121 members and one associate member. The Council (Arts. 17 to 27 of the Convention) consists of 24 members elected by the Assembly for two-year terms. Six of these members represent countries having the largest interest in providing international shipping services, six represent countries with the largest interest in international sea-borne trade, and twelve are States which have special interests in maritime transport or navigation and whose election "will ensure the representation of all major geographic areas of the world".

Between sessions of the Assembly, the Council performs all of the functions of the organization except that of recommending to the member States the adoption of maritime safety regulations, which is done by the most important Committee of the Organization—the Maritime Safety Committee. The duties of this Committee (Arts. 28 to 32) include the consideration of "any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, [and] maritime safety procedures and requirements" (Art. 29 of the Convention) (→ Merchant Ships). The Maritime Safety Committee is called upon to maintain close relationships with such other intergovernmental bodies concerned with transport and communications (→ Traffic and Transport, International Regulation) as may further the objects of the Organization in the promotion of maritime safety.

According to the original text of Art. 28(a) of the Convention, the Maritime Safety Committee:

> "shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

A major dispute over the interpretation of this provision overshadowed the early years of the organization (→ IMCO Maritime Safety Committee, Constitution of (Advisory Opinion)).

The text of Art. 28 was revised in 1965 to ensure a more equitable geographical representation. On the basis of a resolution dated October 17, 1974, membership of the Committee was extended in 1978 to include all the members of the organization.

The technical work of this Committee is carried out in a number of sub-committees dealing with such matters as navigation, radio communications, life-saving appliances, training, ship design and equipment, fire protection, subdivision, stability and load lines, fishing vessels, containers and cargoes, dangerous goods and bulk chemicals.

A Marine Environment Protection Committee was established in 1973 (→ Marine Environment, Protection and Preservation). This is responsible for IMO's anti-pollution activities. Other Committees include the Legal Committee, the Committee on Technical Co-operation and the Facilitation Committee.

The Organization has a secretariat with a staff of 270 and is the only specialized agency to have its headquarters in Britain. Its most important officers are the Secretary-General (the chief administrative officer) and the Secretary of the Maritime Safety Committee.

3. Activities

From the outset, the improvement of maritime safety and the prevention of marine pollution were the most important objectives of IMCO. It has taken an active interest in the implementation of existing maritime conventions and in the formulation and drafting of new conventions and agreements (→ Maritime Law). The first Assembly of IMCO agreed to accept responsibility for the administration and implementation of the International Convention for the Safety of Life at Sea (1948), the International Code of Signals (adopted by the International Radio Conference, 1947) and the International Convention for the Prevention of Pollution of the Sea by Oil (1954).

Over the past 20 years IMCO has promoted the

adoption of some 20 Conventions and has adopted a number of codes and recommendations. The initial work is usually done by a committee or sub-committee. A draft instrument is then produced which is submitted to a Conference to which delegations from all States within the → United Nations system – including States which are not members of the Organization – are invited. The Conference adopts a final text which is submitted to governments for ratification. An instrument so adopted will come into force after ratification by a specified number of countries; the more important the Convention, the more stringent are the requirements for its entry into force (→ Treaties, Conclusion and Entry into Force).

(*a*) *Safety*

The first Conference organized by IMCO in 1960 was concerned with safety matters and adopted a new International Convention on the Safety of Life at Sea (the SOLAS Convention) which came into force in 1965 and comprises a wide range of measures designed to improve the safety of shipping (→ Safety Rules at Sea). These include subdivision and stability; machinery and electrical installations; fire protection, detection and extinction; life-saving appliances; radiotelegraphy and radiotelephony; the safety of navigation; the carriage of grain; the carriage of dangerous goods; and → nuclear ships. In 1974 IMCO convened a further Conference to adopt a new International Convention on the Safety of Life at Sea which would incorporate a number of adopted amendments to the 1960 Convention and would effect other improvements. The 1974 Convention, which entered into force on May 25, 1980, has a much easier amendment procedure under which amendments normally come into force on predetermined dates, unless a number of States Parties to the Convention indicate that they object to such amendments. A 1978 SOLAS Protocol entered into force in May, 1981, and, under the "tacit acceptance" procedure, the first set of amendments to the 1974 SOLAS Convention are due to enter into force in September 1984.

In 1966 an IMCO Conference adopted the International Convention on Load Lines, which entered into force in 1968. IMCO then turned its attention to the very difficult problem of tonnage measurement, a matter which affects the design, stability and taxation of vessels. The first ever international convention on this subject was adopted in June 1969 and will enter into force on July 18, 1982; this Convention required the ratification of 25 States with not less than 65 per cent of the world's gross tonnage of merchant shipping.

In 1972 IMCO adopted a new Convention on the International Regulations for Preventing Collisions at Sea. This Convention, which entered into force in July 1977, contains important regulations concerning traffic separation schemes (→ Collisions at Sea).

Another Convention adopted by IMCO in 1972 dealt with the subject of containers which had by that time become an important feature of international maritime trade. The Convention for Safe Containers, which entered into force in 1977, provided uniform international regulations to facilitate this trade, together with test procedures and related strength requirements.

In 1976 IMCO adopted the International Convention on the International Maritime Satellite Organization. The Convention, which concerns both commercial and safety aspects of vessel operation, came into force on July 16, 1979, and has resulted in the establishment of a new international organization based in London (→ Inmarsat).

In 1977 the IMCO Conference adopted the (Torremolinos) Convention for the Safety of Fishing Vessels. This Convention will, when it comes into force, apply safety standards to new fishing vessels of 24 metres in length and over (→ Fishing Boats).

In 1978 IMCO convened a Conference which resulted in the adoption of the first Convention on Standards of Training, Certification and Watchkeeping for Seafarers. This lays down internationally acceptable minimum standards for crews. (Other minimum standards for seafarers have been developed by the → International Labour Organisation (ILO).)

In April 1979 IMCO adopted the International Convention on Maritime Search and Rescue (SAR). This lays down international procedures for the conduct of search and rescue operations following accidents at sea (see also → Hospital Ships).

In addition to the Conventions, the Organization has produced a number of codes, recommendations and other instruments dealing with safety; these are frequently used by individual governments as a basis for their domestic legislation. Some of the most important of these deal with bulk cargoes; the safety of fishermen and fishing vessels; the carriage of dangerous goods and chemicals; liquefied gases; timber deck cargoes; mobile off-shore drilling units (→ Artificial Islands and Installations); and use of → ports by nuclear merchant ships.

(*b*) *Pollution*

The 1954 International Convention for the Prevention of Pollution of the Sea by Oil, for which IMCO became the depositary in 1960, was the first major attempt by the maritime nations to curb the impact of oil pollution (→ Oil Pollution Conventions; → Environment, International Protection). IMCO secured major amendments to this Convention in 1962 as a result of convening a Conference of Contracting Governments. This Convention was further amended in 1969 and 1971. However, it was not until after the wreck of The *Torrey Canyon* in 1967 that the Organization became involved in a whole series of conventions and other instruments concerned with the problems which the transport of oil posed to the marine environment. The first, the Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, entered into force in May 1975. The second, the Convention on Civil Liability for Oil Pollution Damage, which secures compensation for victims and places liability for damages on the shipowner, entered into force in June 1975.

As fears were expressed over the liability limits and the compensation available under the 1969 Civil Liability Convention, IMCO convened a further conference in 1971 which resulted in the adoption of a Convention establishing the International Fund for Compensation for Oil Pollution Damage. This Convention came into force in October 1978; the first Assembly of the Fund, which was established on contributions from oil importers, met in its London headquarters in November of that year.

In 1973 IMCO secured the adoption of the most ambitious anti-pollution convention so far drafted. This, the Convention for the Prevention of Pollution from Ships (MARPOL), deals not only with oil, but also with pollution from garbage, sewage, chemicals and other harmful substances (→ Waste Disposal). Unfortunately, progress toward ratifying this Convention was very slow, and a series of tanker accidents which occurred in the winter of 1976–1977 led to demands for further action and to the convening of a Conference on Tanker Safety and Pollution Prevention in February 1978. In many respects, this has been the most influential of all of the Conferences so far sponsored by IMCO. Protocols relating to the 1974 SOLAS and 1973 Marine Pollution Conventions, strengthening the requirements of these instruments and facilitating their early entry into force, were adopted. The SOLAS Protocol entered into force in May 1981, and substantial progress has been made toward the ratification of the MARPOL Protocol, which would largely absorb the present Convention.

IMCO has also been engaged in other projects designed to reduce the threat of oil pollution. A Regional Oil-Combating Centre was established in Malta in conjunction with the → United Nations Environment Programme (UNEP) in December 1976, and IMO is investigating similar projects in the Caribbean, West Africa and elsewhere.

(*c*) *Other matters*

IMCO was from its early days concerned with the lack of internationally standardized documentation procedures in the field of maritime traffic. In 1965 the Convention on Facilitation of Maritime Traffic was adopted; this seeks to aid cooperation between governments and to secure the highest practicable degree of uniformity in formalities and procedures. The Convention came into force in 1967 and was amended in 1973.

In 1971 IMCO, in association with the → International Atomic Energy Agency and the European Nuclear Energy Agency (→ Organisation for Economic Co-operation and Development, Nuclear Energy Agency), convened a conference which adopted a Convention relating to Civil Liability in the Field of the Maritime Carriage of Nuclear Material; the Convention entered into force in 1975.

In 1974 IMCO adopted a Convention which

established a régime of liability for damage suffered by passengers carried on sea-going vessels. In 1976 IMCO adopted a convention which raised the limits of liability (established in a convention of 1957) in claims for loss of life or personal injury, or in claims for damage to ships, property or harbour works.

(*d*) *Technical assistance*

In recent years the organization's technical assistance programme, has been designed to help States (particularly → developing States) to reach the high standards laid down in IMCO Conventions and other instruments. Advisers and consultants employed by the Organization assist on projects concerned with maritime safety administration, maritime legislation, marine legislation, training for deck and engineering personnel, port installations and the carriage of dangerous goods. Technical assistance programmes are implemented in cooperation with the → United Nations Development Programme, the UNEP, the → United Nations Conference on Trade and Development, the ILO and the individual donor countries.

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INTERNATIONAL MARITIME SATELLITE ORGANIZATION *see* Inmarsat

INTERNATIONAL MONETARY FUND

1. Background and Structure

The Articles of Agreement of the International Monetary Fund, as well as the Articles of Agreement of the → International Bank for Reconstruction and Development, were drafted at a conference held at → Bretton Woods, New Hampshire, in July 1944. The proposals of John Maynard Keynes in England and Harry Dexter White in the United States were the main influences in the creation of the Fund. Their chief objective was to avoid the monetary disorders of earlier decades (→ Monetary Law, International).

The Fund's Articles were amended on July 28, 1969 and again on April 1, 1978. The first amendment created the special drawing right (SDR) (see section 3(c) (ii) below); the second amendment was a thorough revision of the Articles following the collapse of the par value system. Amendments of the Articles are adopted when accepted by three-fifths of the membership and 85 per cent of the total voting power. The acceptance of all members is necessary for the amendment of three provisions (see Art. XXVIII (b)).

The Fund is an intergovernmental organization and a Specialized Agency of the → United Nations (→ United Nations, Specialized Agencies). States are admitted to membership on terms prescribed by the Board of Governors (→ International Organizations, Membership). The terms may not establish permanent rights and obligations for a member that differ from those of other members (→ International Organizations, General Aspects). The criteria for membership are statehood (→ States), control of external relations, and ability and willingness to perform the obligations of membership. Size or the character of the economy is not a criterion. Membership has grown to 146 States in all parts

of the world. (Unless otherwise stated, all facts relate to the position at mid-1982). A State accepts the Articles on its own behalf and in respect of all its dependencies, whatever their constitutional status may be. A State may withdraw from the Fund with immediate effect, and must then settle all accounts. The Fund may compel a State to withdraw for failure to perform certain obligations (→ International Obligations, Means to Secure Performance). Cuba, Czechoslovakia, and Poland are former members. Indonesia reentered after withdrawing.

The senior organ is the Board of Governors, consisting of one Governor and one Alternate appointed by each member. Normally, the Governor is the Minister of Finance or Central Bank Governor of his State, but a Governor does not have to hold such a post.

The Executive Board consists of a minimum of 20 Executive Directors, of whom 5 must be appointed and 15 elected. The members with the 5 largest quotas appoint Directors. These members are the United States, the United Kingdom, the Federal Republic of Germany, France, and Japan. A maximum of two additional Directors may be appointed by members not having one of the five largest quotas if, in the two years between periodic elections of Executive Directors, they have made the largest contributions to the financing of the Fund's outstanding transactions through the General Resources Account. These two members are not compelled to appoint and may decide to participate in the election of directors. Saudi Arabia has appointed an additional Director since November 1, 1978. On such an appointment, the number of Directors to be elected in an election may be reduced or maintained. The effectiveness and balance of the Executive Board are criteria for these decisions as well as for a decision to increase the number of elective Directors beyond 15. The Executive Board has grown to 22 Directors. Each Director appoints one Alternate, who is able to act for the Director in his absence. All members that do not appoint Directors may participate in an election. They form constituencies of their choice for this purpose. Many, but not all, constituencies are regional in character. Some are composed of both developed and developing members. While a minimum number of votes is required for the election of a Director, a successful nominee can retain no more than a maximum number of votes. These margins are designed to achieve an approximate equality of voting power among constituencies as well as reasonable opportunity for members to join the constituencies they prefer (→ Voting Rules in International Conferences and Organizations).

The Managing Director, who is selected by the Executive Board, is its Chairman as well as chief of the operating staff. He and the staff, unlike Governors and Directors, owe their duty exclusively to the Fund in the discharge of their functions (→ Civil Service, International).

Another organ, the Council, can be, but so far has not been, called into existence (see Art. XII, Section 1 and Schedule D of the Articles). Its personnel would reflect the distribution of seats in the Executive Board. The Council, which would rank between the two Boards, would be composed of Governors, Ministers, or persons of comparable rank. These qualifications of Councillors are mandatory because the purpose of provision for the Council was to strengthen the Fund by means of a small organ composed of persons of political or public responsibilities who could meet whenever necessary. (The Board of Governors is too large to be able to meet conveniently more than once a year). The Council's main function would be to supervise the management and adaptation of the international monetary system.

In the absence of the Council, the Interim Committee of the Board of Governors on the International Monetary System functions as a body composed of persons with qualifications similar to those of Councillors. The Committee's terms of reference also resemble those of the Council. Unlike the Council, however, the Committee is not an organ and cannot take decisions, but the Committee's recommendations on major issues of policy carry great weight.

The Articles provide for a Committee on Interpretation of the Board of Governors (Art. XXIX(b)), but it has not yet been appointed. The Fund can adopt binding and final interpretations of its Articles according to the procedure set forth in the Articles. The Committee would function as part of this procedure by hearing appeals from decisions of the Executive Board

that were challenged by any member within three months. Decisions of the Committee become decisions of the Board of Governors unless set aside by it. The Fund ordinarily follows less formal procedures for interpretative decisions. They are not binding and final in a technical sense but are respected nonetheless.

Certain specific powers under the Articles are conferred directly on the Board of Governors and therefore cannot be delegated by it. All other powers not specifically conferred on the Executive Board (or other organs) or on the Managing Director are vested in the Board of Governors and may be delegated by it to the Executive Board. The maximum delegation has been made. The Executive Board is responsible for conducting the business of the Fund, and the Managing Director conducts ordinary business under the direction of the Executive Board.

2. *Voting Provisions*

In all organs except the Committee on Interpretation, → weighted voting power prevails. Voting power varies considerably between the United States at one extreme and a number of → micro-States at the other extreme. Each member has 250 votes, in deference to the traditional equality of States (→ States, Sovereign Equality), and one additional vote for each part of a member's quota equivalent to SDR 100 000 (on the SDR see section 3(c)(ii) *infra*). Quotas are intended to reflect the economic and financial position of members. The Fund must consider the general adjustment of quotas at intervals not exceeding five years. The Fund may consider the adjustment of an individual quota at any time on a member's request, but the Fund is reluctant to propose such an adjustment unless there is an overriding reason. General reviews are arduous because the absolute and relative amounts of quotas affect many rights and obligations in the Fund in addition to voting power. A member's quota cannot be changed without its consent.

A Governor casts the number of votes allotted to the member that appoints him. A Director casts the number of votes alloted to the member that appoints him or to the members that elected him. A member that appoints an additional Director can agree with individual members of the constituency to which they all formerly belonged that the Director shall cast the votes of these other members in addition to the votes of the appointing member. The votes of a Governor or Director can be cast only as a unit. The Articles do not provide that a Director must obtain the guidance of members of his constituency. Similarly, the Articles do not provide that he must regard as instructions any guidance that he does obtain. He is free to establish his own relations with his constituency, because he is not solely a channel for their views. He is also a functionary of the Fund, and is, for example, remunerated by it, even though his position differs from that of the Managing Director and staff. Because of this dual aspect, an elected Director cannot be dismissed by his constituency before his term expires. An appointed Director serves at the will of the member that appoints him.

If the Council were called into operation, a Councillor would be able to cast the votes of the individual members of his constituency because the personnel and functions of the Council, as a more political organ, would be closer in spirit to the Board of Governors than to the Executive Board.

The basic majority for the adoption of decisions is a majority of the votes cast. For a substantial number of decisions, however, a special majority of either 70 or 85 per cent of total voting power is required. The 1978 ammendment of the Articles is responsible for a substantial proliferation of the decisions for which a special majority is necessary. One explanation of this development is the breadth of certain powers that are designed to permit the further evolution of the international monetary system. For other and similarly broad powers, the explanation is that the negotiators of the text were unable to reach agreement on more closely drafted provisions. The distribution of the special majorities was guided by a preference for the lower majority if the powers seemed "operational" and for the higher majority if they seemed "structural" or "political". These categories, however, were not precise and were not rigidly applied.

The normal practice of the Fund is to avoid voting and to take decisions by the "sense of the meeting". In determining whether there is a sense of the meeting, the Chairman of the Executive Board takes account of weighted voting power.

The importance attached to weighted voting power notwithstanding the practice of decision by → consensus or widespread agreement without voting has led to campaigns for the redistribution of voting power in favour of developing members as a group (→ International Economic Order). In the absence of an amendment of the Articles to modify the formula for voting power, the result could be achieved only by the adjustment of quotas. A change in favour of developing members has occurred already as the result of general adjustments and the individual increases obtained by → China (when the Fund recognized the Government of the People's Republic as the representative Government in the Fund) and by Saudi Arabia.

3. Functions

The Fund's functions are manifold and include, for example, technical assistance, preparation of studies, dissemination of information, and collaboration with other organizations. The main functions can be divided into three categories: (a) regulation or supervision of certain practices and policies of members, (b) finance, and (c) international liquidity (→ Economic Law, International).

(a) Regulation and supervision

(i) Exchange rates

Exchange rates are at the heart of the Fund's regulatory and supervisory functions. Under the original Articles, each member reached agreement with the Fund on an initial par value for the member's currency and on changes in par value, in terms of gold as the common denominator. Each member had to take appropriate measures to confine exchange transactions in its territories within narrow margins around the ratio ("parity") between its own and another member's currency that was derived from their par values. In practice, the system was one in which the United States maintained the par value of its currency by freely buying and selling gold for dollars, at prices close to par with the monetary authorities of other members, while most of them maintained the par values for their currencies by intervening in the exchange markets with dollars or another currency convertible into dollars. This system seemed symmetrical in the use of reserves to support par values until the repeated deficits in the balance of payments of the United States undermined confidence that the growing volume of dollars in reserves could be converted into gold or that the par value of the dollar would remain unchanged. The system collapsed on August 15, 1971 when the United States decided that it would no longer maintain the par value of the dollar or any other fixed value for it.

The increased cost of importing oil and rampant inflation made restoration of a workable par value system impossible. The 1978 amendment, therefore, permits members freedom to choose their exchange arrangements, with three qualifications. They may not maintain the external value of their currencies in terms of gold, because its role is to be reduced. They may not adopt discriminatory currency arrangements with respect to current international transactions, and they may not adopt multiple currency practices, without the Fund's approval, because these measures are inequitable and harmful to national or international prosperity.

Freedom to choose exchange arrangements is not freedom of behaviour. Members' obligations, however, are no longer based on the principle that stable exchange rates are the objective of the Articles. The new principle is that "the orderly underlying conditions . . . necessary for financial and economical stability" are the objective (Art. IV, Section 1). The assumption is that only these conditions will produce a stable system of rates. Therefore, members have undertaken a general obligation to collaborate to bring about orderly exchange arrangements and a stable system of rates, together with more specific obligations for the same purpose.

The Fund oversees the compliance of members with their exchange rate obligations, exercises firm surveillance over their exchange rate policies, and formulates specific principles for the guidance of those policies. Surveillance takes two forms: general and individual. General surveillance takes place as part of a periodic examination of the world economic outlook, a purpose of which is to promote coherence among members' policies. The emergence of a number of reserve currencies, with the disturbing effects of shifts among them in the management of members' reserves, increases

the need for coherent policies. On the individual level, the Fund consults with each member periodically and at any other time if the Managing Director thinks that consultation is advisable.

The Fund can decide to make recommendations to members on general exchange arrangements that accord with the development of the international monetary system, but members may continue to apply the exchange arrangements they prefer. Similarly, the Fund may decide to call into operation the more flexible par value system that is set forth in the Articles, if the conditions described in the Articles, which include the assurance of symmetrical obligations among members, justify this action. Again, members would be able to apply other exchange arrangements. The Fund may choose the common denominator of the restored par value system. The Fund would probably choose the SDR, but it may not choose gold or a currency.

(ii) Multilateral system of payments and transfers

The multilateral system of payments and transfers for current international transactions, which are broadly defined by the Articles, is another major feature of the Fund's regulatory functions. This system ensures that governments or their fiscal agencies do not prohibit, unduly delay, or otherwise hinder the availability or use of their own or another member's currency for making such payments or a non-resident payee's ability to exchange the currency he receives in these payments for his own currency (→ Payments, International Regulation; → State Debts, International Administration and Control). In this way, the expansion and balanced growth of international trade and services is facilitated (→ Foreign Investments; → Loans, International; → World Trade, Principles). The multilateral system is often called market convertibility because of the progressive extension of markets in which exchange can be obtained for payments for current international transactions and through which proceeds can be transferred. Members may regulate international capital transfers as they see fit, provided that in doing so they do not impede the multilateral system (→ Capital Movements, International Regulation).

The Fund consults with members in order to ascertain that they are not imposing prohibited restrictions, but it may approve restrictions if it deems them temporarily necessary. Restrictions are authorized by the Articles as transitional arrangements if a member has not yet undertaken to perform the obligations of convertibility. The Fund consults with members in order to encourage them to repeal unnecessary restrictions. Under Art. VIII, Section 2(b) of the Articles, if exchange controls involving a member's currency are consistent with the Articles, the courts of other members must refuse to enforce "exchange contracts" that are contrary to the controls (→ International Law and Municipal Law: Conflicts and their Review by Third States). The provision is a specific application of the obligation of members to collaborate with the Fund and among themselves in support of the purposes, provisions, and policies of the Fund. But the provision is condensed, and clarification of it has provoked much litigation and academic controversy in many countries.

(b) Financial activities

The financial activities of the Fund are conducted through the General Department, which consists of the General Resources, Special Disbursement, and Investment Accounts. The Fund holds the subscriptions of members, which are equal to their quotas, and certain other assets in the General Resources Account. The basic transaction conducted through this Account is the sale by the Fund to a member, in return for its own currency, of the Fund's holdings of SDRs or the currencies of members in a strong balance-of-payments and reserve position. Many of these transactions take place in accordance with assurances of financial assistance given by the Fund in the form of stand-by arrangements or a variant called extended arrangements under one policy. Arrangements are approved in support of programmes of economic and financial adjustment presented by members. The duration of arrangements is from one to three years. The purpose of transactions is to give a member in present or prospective difficulties, caused by its balance of payments or the level of its reserves, both resources and the time to pursue policies that will correct or head off its difficulties. This assistance gives members the confidence to follow

policies that promote national and international prosperity and enables them to avoid measures, such as restrictions, that would be detrimental to attempts to achieve prosperity.

A member may make no more than temporary use of the Fund's resources, so that they can revolve for the benefit of other members when they are in need. Adjustment also helps to ensure that a member will be in a position to repurchase its currency in due time with reserve assets acceptable to the Fund. Alternatively, when the member's position has improved, the Fund can sell its currency to other members in need of assistance. The effect of both transactions is to reverse outstanding use. The basic period for reversal is three to five years, but under some policies the period extends to ten years. These are maximum periods, because a member normally is expected, and may be required, to reverse its transactions in instalments as its balance-of-payments and reserve position improves. A member pays a service charge on transactions and periodic charges while use is outstanding. Members whose currency in the Fund is reduced below a certain level as the result of disposition of the currency in the Fund's activities receive remuneration on the amount of the reduction below the level.

The Fund has various policies on the use of its resources and may adapt them as circumstances change. "Conditionality" describes the requirement of a satisfactory programme of adjustment under some policies. The content of conditionality is kept under continuing scrutiny. Conditionality has been adapted to new difficulties of members by lengthening the duration of arrangements and the periods for the reversal of use. Some policies call for only modest conditionality or for none at all. A member can often make concurrent use under various policies so that total outstanding use can be many times its quota.

The Fund can dispose of all currencies with the assurance that they will help purchasing members. If a member's currency is not a "freely usable" one, the member must exchange it, on the purchaser's request, for such a currency. The Fund has deemed the United States dollar, Deutschmark, Japanese yen, French franc, and pound sterling as freely usable. The Fund can vary this list.

The Fund can augment its resources by borrowing the currency of a member from that member, or, with its concurrence, from any source within or outside its territories. There are, however, no obligations to lend. Usually, the Fund borrows when members face abnormal needs, such as those associated with short-term capital movements, the increased cost of imports of oil, or the concentration among a few members of large surpluses in the current account of their balances of payments. The first of these needs produced the Fund's General Arrangements to Borrow with ten industrialized members or their central banks. These standing arrangements led to the formation of the Group of Ten, which in turn inspired developing members to form the Group of Twenty-Four.

The Fund holds the proceeds of sales of gold in excess of the former official price in the Special Disbursement Account. These holdings may be transferred for immediate use through the General Resources Account or may be disbursed in financing that is not otherwise authorized by the Articles but is consistent with its purposes. Balance-of-payments assistance on special terms to poorer developing members in difficult circumstances is mentioned as one possible form of financing. The Investment Account is the medium through which the Fund may invest proceeds of the sale of gold beyond the former official price, or other assets, up to an amount equal to its reserves.

The Fund may administer, as trustee, other resources, including those contributed by members, for purposes consistent with the Articles. Under this authority, the Fund has administered a Trust Account and Subsidy Accounts for the benefit of developing members.

(c) *International liquidity*

In relation to international liquidity, the Fund's main functions are surveillance over developments involving reserve assets, encouragement of a gradual reduction in the role of gold, and promotion of the role of the SDR (special drawing right) so that it can become the principal reserve asset in the international monetary system.

(i) *Gold*

A gradual reduction in the role of gold has

been sought by a radical reduction of its role in the Fund. The official price and all but exceptional obligations to transfer gold between the Fund and members have been abolished. The Fund can sell its remaining gold to members at the former official price or to anyone at a price agreed with the purchaser on each occasion on the basis of market prices. In dealing with gold, the Fund must be guided by the objectives of avoiding management of the price, or the establishment of a fixed price, in the gold market; better surveillance of international liquidity; and promotion of the role of the SDR.

The Articles do not purport to abrogate the function of gold as a reserve asset for members. The 1978 amendment has deprived gold of legal status but not of practical importance.

(*ii*) *SDRs*

The SDR is an asset that the Fund allocates to members through its other Department, the SDR Department. Members hold SDRs as reserve assets and can use them in support of their currencies. Allocations are made to meet the long-term global need, as and when it arises, for a supplement to existing reserve assets. Decisions to allocate are made for basic periods of five years, or for such other period as the Fund selects, and at the same rate in proportion to the quotas of participating members. All members have chosen to participate.

The legal analysis of the SDR system is that it rests ultimately on two obligations, but these obligations need not be involved in all the numerous operations and transactions involving SDRs. One obligation is the duty of the Fund, on the request of a member needing to use reserves because of its balance-of-payments or reserve position, to designate a member in a sufficiently strong balance-of-payments and reserve position to receive a transfer of SDRs and to provide a freely usable currency to the transferor. The other obligation is the duty of the designated transferee to accept the transfer. A member may agree, but cannot be required, to hold more SDRs than three times the total of allocations to it. The Fund may permit official entities to hold SDRs and to use them in operations or transactions with members or other holders, but allocations can be made only to members. The Fund has named a number of international organizations and the central bank of a non-member as other holders. The SDR, therefore, can be a monetary asset without being a reserve asset.

Although the two obligations referred to above remain the ultimate legal foundation of the SDR, members are permitted to arrange transfers between themselves without the designation of transferees by the Fund. Moreover, the transferors may engage in these transactions even if they have no need to use reserve assets in support of their currencies.

The Fund may allow members to enter into operations in SDRs not otherwise authorized by the Articles. It has decided to allow members, and other permitted holders, to use SDRs in the direct settlement of financial obligations, loans, pledges or transfers to secure the performance of financial obligations, swaps, forward operations, and donations.

The Fund determines the method of valuation of the SDR. The current method values the SDR by reference to a "basket" of specified amounts of the United States dollar, Deutschmark, Japanese yen, French franc, and pound sterling, and by reference to the exchange rates for these currencies.

All holders receive interest on their holdings of SDRs at a rate determined by the Fund, and members pay charges, at the same rate, on total allocations to them. The interest rate is calculated by reference to the interest rates on specified domestic instruments issued in the markets of the five currencies in the valuation basket weighted in accordance with the basket.

The SDR is the Fund's unit of account. For example, the transactions of the General Resources Account are conducted, borrowing is negotiated, and the value of currencies held in that Account is maintained, in terms of the SDR. Moreover, the SDR has become the unit of account for the purposes of a growing number of international organizations, treaties, and other public as well as private activities.

It has been seen that the SDR is to become the principal reserve asset in the international monetary system. This formulation, though vague, is meant to express the aspiration that the SDR will be the instrument for the rational evolution of the system. The formulation has already had

normative effects. For example, it has inspired various decisions to improve the characteristics and extend the uses of the SDR.

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INTERNATIONAL ORGANIZATIONS, ADMINISTRATIVE TRIBUNALS, BOARDS AND COMMISSIONS *see* Administrative Tribunals, Boards and Commissions in International Organizations

INTERNATIONAL ORGANIZATIONS AND PRIVATE LAW PERSONS, CONTRACTS BETWEEN *see* Contracts between International Organizations and Private Law Persons

INTERNATIONAL ORGANIZATIONS, FINANCING AND BUDGETING

1. Notion; Sources

The budget of an international organization is the legal act by which its income and expenditures for a given period are estimated. It authorizes the organization to defray certain expenditures and it constitutes the legal basis for the payment of contributions if the organization has no independent sources of income at its disposal. Generally speaking, the budget serves the following purposes: Its establishment provides the decision-making organ with an opportunity to influence the work programme of the organization substantially; the budget itself constitutes an operational plan according to which the secretary-general will carry out his responsibilities; it also serves as a yardstick for auditing, for controlling the work of the organization, and for evaluating the activities of the organization.

Technically speaking, the budget can be organized in two different ways. Prior to 1974, the budget of the → United Nations, for example, was structured according to income and expenditure. Since 1974, however, the UN has followed the "Planning-Programming-Budgeting System" having been influenced by the positive experiences of the United States federal government system (for further details see: Report of the 5th Committee, UN Doc. A/C.5/1492, April 20, 1972; Foreword by the Secretary-General to the Proposed Programme Budget for the Biennium 1974–1975, GAOR, 28th Session 1973 Suppl. 6, p. vii). The difference between the traditional and the new programme-oriented concept is the subordination of the expenditure budget to the UN's plan of action, which requires a detailed programmatic description to precede the financial data. It is the objective of the new system to provide for a greater clarity of the plan of action and its financial implications. It is hoped that this

will foster the evaluation of the activities of an international organization from the outset.

The legal bases for budgetary decision-making are scattered among different sources. All constitutions of international organizations contain at least the most basic rules, for example with regard to the approval of the budget (e.g. → United Nations Charter, Art. 17(1)), contributions (UN Charter, Art. 17(2)) and → sanctions against member States which are in arrears in the payment of their contributions (UN Charter, Art. 19). Besides this, all major international organizations have their own financial regulations, often further specified in subsidiary rules (→ International Organizations, Internal Law and Rules). The authorization to issue financial regulations can derive either from the constitution directly or it may have its legal foundation in the organization's implied powers (→ International Organizations, Implied Powers). Under international law the organizations are deemed to have those powers which, though not expressly provided for in the constitution, are, by necessary implication, essential to the performance of their duties (see the → International Court of Justice's → Reparations for Injuries Suffered in Service of UN (Advisory Opinion)). The financial regulations of the UN are highly relevant here, having served as a model for many other international organizations. A special relationship exists within the UN system concerning budget coordination between the UN and its Specialized Agencies (→ United Nations, Specialized Agencies) which accords to the UN the right to influence the budget of the Specialized Agencies (UN Charter, Art. 17(3)), as further detailed through special agreements. The first of these treaties was concluded with the → International Labour Organisation (UNTS, Vol. 1, p. 200) and has served as a model for those following it (for details see Repertory of Practice, Vol. 1, p. 543; Vol. 1, Suppl. No. 1, p. 189).

2. *Preparation and Adoption of Budget*

(a) *International organizations in general*

Responsibility for the preparation of the budget is vested in the secretariat (→ International Secretariat). This gives the secretariat some power of initiative; however, it may normally only operate with regard to existing fields of activity of the organization unless it has the right to make proposals. In this case, it is competent to initiate entry into new fields of activity through its budgetary estimates.

Within the secretariat, all departments submit estimates for their activities. These estimates are pooled and controlled by a budget office that normally holds a certain degree of independent status in the secretariat. After deliberations have been concluded in the secretariat and in other organs which may have to be consulted, the draft budget is usually forwarded to the executive board of the organization concerned (the → International Civil Aviation Organization, → World Health Organization, (etc.). The UN has a special organ for this purpose: the Advisory Committee on Administrative and Budgetary Questions of the → United Nations General Assembly, which is responsible for making a competent examination of the draft budget. It also studies the draft budget of the Specialized Agencies. Subsequently, the draft – in a possibly amended form – will be passed on to the organ which finally decides on the budget.

Apart from the ordinary procedure, all constitutions of international organizations provide for the possibility of submitting revised estimates in those cases in which costs could not be foreseen in regular estimates. Those revised estimates must be passed on to the organ empowered to decide finally on the budget before the beginning of the session when the budget is to be discussed.

Costs arising after the final approval of the budget have to be included in supplementary estimates. These are drawn from special funds and require authorization from the secretary-general or from the officer in charge of budgetary control. In the UN, supplementary estimates are to be submitted to the General Assembly.

The final approval of the budget is, as a general rule of international law, vested in the assembly. The rationale for this is that, since all members contribute towards the expenses, only the organ in which all are represented can decide on the expenditure. In practice, however, amendments are rarely made, and sometimes the assembly even lacks the power to make them. In the → International Atomic Energy Agency, for instance, the General Conference must return the budget to the Agency's Board if it requires alterations to be made. The assemblies decide by simple or

two-thirds majority (→ Voting Rules in International Conferences and Organizations).

(b) The European Communities

After the fusion of the organs of the → European Communities (EC) in 1967, their separate budgets were replaced by a joint budget. Before 1970, the European Parliament had only consultative functions with respect to the preparation of the budget. However, the change towards the financing of the EC from its own sources of revenue resulted in an increase of the Parliament's powers. Since 1975, the right to approve the budget has been divided between the Council and the Parliament which now bear a joint responsibility in this respect (→ Council of Europe). The constitutional point of departure lies in Art. 203 of the Treaty establishing the → European Economic Community, which has been supplemented by various agreements between the Council, the Commission and the Parliament.

The system of budget-preparation can be divided into separate phases. It is up to the Commission to draw up the first draft. The Council then decides on it by a qualified majority and transmits the project to the European Parliament. The latter has to vote upon the proposed budget within 45 days; otherwise the budget is considered to be approved (EEC Treaty, Art. 203(4); Euratom Treaty, Art. 177(4) (→ European Atomic Energy Community); ECSC Treaty, Art. 78 (→ European Coal and Steel Community)). The European Parliament has three alternatives for action: to approve the budget by simple majority, to disapprove the budget with the majority of its votes and a two-thirds majority of those present and voting, and to propose alterations. In the last case, the ensuing procedure depends upon whether the Parliament envisages the alteration of "obligatory" or "non-obligatory" expenses.

3. Income

(a) International organizations in general

Most international organizations are financed through contributions of their members. However, the methods of calculation of the contributions differ. The basic question is how to fix each member's share. Only a few international organizations assess their members' contributions in equal shares. The most important of these are the Central Commission for the Navigation of the → Rhine and the → Organization of Petroleum Exporting Countries (OPEC). Some international organizations, such as the → Universal Postal Union and the → International Telecommunication Union, have created different classes of contributions, with each member free to choose its own class of contributions. Commonly used are scales of assessment on which a certain percentage of the expenditure is assessed to each member. The UN apportions responsibility for its expenditure broadly according to the capacity of each member to pay. This system seems to conflict with the principle of equality of States in international organizations if it is not accompanied by a → weighted voting system. It should be mentioned, however, that the minimum share of 0.01 per cent in the UN's expenditure may be an even larger sacrifice for those States paying it than the maximum share of 25 per cent is for the United States. The scale of assessment is prepared in the UN by the Committee on Contributions; the final decision is vested in the General Assembly. It bases its calculations upon averages from the members' national income statistics over a period of three years, taking into account further aspects such as: comparative per capita income, temporary dislocation of national economies, members' ability to secure foreign currency, special economic and financial problems of the → developing States, inflation rates, etc. (for further details see Report of the Committee on Contributions, GAOR 35th Session Suppl. No. 11). Several Specialized Agencies apportion their expenses according to the principles used in the UN scale.

There are some international organizations which base their scale of contributions in part or entirely on the interest which the members have in the work of the organization (e.g. the ICAO, the → World Meteorological Organization, and the Inter-American Tropical Tuna Commission (→Fisheries, International Regulation)).

Several international organizations have fixed maximum and minimum contributions. The decision on maximum limits has been guided by the idea that the financial input of one State should not be so high as to give it a dominant position. The principle of a minimum contribution

has been justified by the idea that the participation in an international organization on a basis of full sovereign equality (→ States, Sovereign Equality) has to be balanced by the acceptance of some minimum responsibilities. In the UN the maximum contribution is 25 per cent and the floor has been fixed at 0.01 per cent. Many constitutions of international organizations provide for some form of sanctions against members failing to pay their contributions, such as loss of voting rights or even membership (→ International Organizations, Membership) or loss of access to the organization's machinery for judicial settlement of disputes. The → effectiveness of such sanctions, however, remains questionable.

Besides regular contributions international organizations receive voluntary contributions and gifts. Voluntary contributions can be distinguished from gifts in the following way: In principle, voluntary contributions are made periodically though the amount may vary; gifts are given on only one occasion. Voluntary contributions are made for particular programmes, whereas gifts in general benefit the entire programme. Within the UN system the → United Nations Development Programme and the → United Nations Children's Fund (UNICEF) are, for example, financed through voluntary contributions; outside the UN system, voluntary contributions do not play such a significant role.

Some international organizations have an independent income of their own. They charge for the services they render. The amount actually paid by each member will then depend on the use it makes of the service offered. The best examples of this are the → International Bank for Reconstruction and Development, the → International Finance Corporation and the IAEA.

Most international organizations have the right to contract loans. The UN, for example, has raised loans for the establishment of its headquarters and for overcoming the financial crises caused by budget deficits.

Many international organizations also impose a staff levy on the salaries of their officials, thus following the example of the UN (→ Civil Service, International). Other taxes are levied only by a few international organizations.

(*b*) *The European Community*

Although the ECSC had independent sources for financing, the EEC and Euratom were dependent on contributions calculated according to the economic resources of the member States (see EEC Treaty, Art. 200). The financial control thus exercised by the members was supposed to last only for a transitional period. Financial self-sufficiency of the Community was coupled with the development of effective parliamentary control, based upon direct elections to the European Parliament pursuant to Art. 138(3) of the EEC Treaty. On April 21, 1970 the Community of the Six handed down the "own resources" decision (Council decision 70/243, No. L. 94, p. 19) to provide for definitive and independent financing of the Community budget. The "own resources" were to consist of all import duties and agriculture levies, and a levy of up to one per cent of national value-added tax revenue applied on a uniform value-added tax base. As a temporary expedient pending the introduction of the common value-added tax base, an equivalent sum was to be made available in the form of levies on member States proportional to their gross national products. In accordance with Art. 201 of the EEC Treaty the decision required adoption by the parliaments of all member States; its alteration will have to follow the same procedure (→ International Law and Municipal Law). On May 17, 1977, after the Council, by its sixth directive on the calculation of the common value-added tax base (Official Journal No. L. 145, p. 1), established the relevant basis and three members issued implementation procedures, the conditions had been fulfilled to replace the contribution system by the "own resources" system, which came into effect for the budget of 1979.

4. *Expenditure*

The expenses of international organizations can be classified in two ways: according to the object of expenditure or to the field of activity. In practice, budgets often employ both approaches. The Proposed Programme Budget of the UN for the Biennium 1980–1981 seems to concentrate on the field of activity: for example, overall policy-making, direction and coordination (Part I), which

covers the activities of the General Assembly and the Secretary-General (→ United Nations Secretary-General).

Some international organizations keep a separate budget for their operational (as opposed to administrative) expenditure either because they apply a different voting procedure in approving the operational expenditure or because they finance administrative and operational costs from different sources.

Levels and categories of expenditure depend on the respective functions of the international organizations and are, therefore, as far as the operational expenditure is concerned, hardly comparable. Administrative expenditures always include costs for personnel (by far the largest single item), meetings (sessions of organs or conferences), buildings and general expenses (costs for communications, recording of meetings and documentation).

5. Auditing

All international organizations maintain an internal financial control in order to ensure the regularity of all financial transactions as well as the efficient use of the organizations' resources. Usually the controller is attached to the office of the secretary-general.

Besides this, an external audit exists which is usually performed by a board of auditors (as in the UN), the auditor-general of the host State or a private firm.

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INTERNATIONAL ORGANIZATIONS, GENERAL ASPECTS

I. INTRODUCTION AND HISTORY

A. Definition and Legal Basis

The term international organizations denotes an association of States established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfil particular functions within the organization.

Since international organizations are necessarily based upon multilateral treaties (→ Treaties, Multilateral), the law of → treaties forms part of the law of international organizations.

Ratification is required for the entry into force of the constituent treaty of an international organization (→ Treaties, Conclusion and Entry into Force), either by all signatory States, a specified number of States, a majority of States, certain named States or a combination of these possibilities, such as ratification by certain States together with a majority of the others (e.g. Art. 110(3) of the → United Nations Charter), or ratification by a specified number including certain specified States (e.g. Art. XXI(E) of the Statute of the → International Atomic Energy Agency).

The choice of ratification procedure depends upon political circumstances. In the case of a highly integrated organization, ratification by all signatory States would seem to be necessary, since the organization can only function upon this condition; the → European Communities are an example of this type.

The question of dissolution of the organization will be dealt with in the constituent treaty itself, if at all. The exceptional grounds for the termination of treaties under general international law (→ Treaties, Termination) will also apply, together with the principle of abrogation by *actus contrarius*.

International organizations may be established for a specified period of time (as in the case of the → European Coal and Steel Community (ECSC), where Art. 97 of the constituent treaty specifies a period of 50 years). Alternatively, they may be established for an indefinite period, which may be provided for expressly, but would be implied if the treaty was silent on the matter. A further possibility is the specification of a determining event (as in the case of the → European Organization for Nuclear Research under Art. XIV of its constituent treaty).

An organization's constituent treaty is the basis of both its establishment and its operation. It contains – in a substantive, not a formal sense – the organization's constitution. This constitution must at least provide for the organization's chief organ and the powers of that organ. In addition to rules prescribing the structure of the organization, there will be provisions concerning the purpose of the association and the rights and duties of member States. Along with provisions of this kind, rules are frequently encountered which are similar in content to those of administrative law, the law governing civil servants, procedure and even criminal law in municipal systems. However, this internal law of associations of States ranks as → international law in the same way as the other provisions.

It is possible for the rules laid down in such treaties to develop into → customary international law. This can happen both in a positive and in a negative sense. Given the imperfection of international organizations, this possibility can be of great importance (cf. the practice with regard to Art. 27(3) of the UN Charter; → Veto). The question as to whether a certain treaty practice can be assumed to reflect customary international law cannot be answered in general terms: this depends upon a careful examination of the specific rule in question. Also, it must be pointed out that, if such a rule exists, the application of such a rule of customary law to a specific organization is only admissible to the extent that the general structure and function of this organization does not collide with the purpose and the scope of the rule in question.

The formation of an international institution is also possible by means of corresponding provisions in the municipal law of the individual countries involved, as was the case in the first period of the → Nordic Council. This will not, however, be an international organization in the sense of international law unless its status as a → subject of international law can be based upon customary international law.

B. International Organizations distinguished from the International Legal Community and from States

Every legal system, however unstructured, creates a legal community. This is true both of the

general → international legal community and of particular international legal communities. Such communities also represent established associations of States having organs, although without specially defined functions. The members of the legal community – States – are both law-makers and subjects of the law. In the general international legal system the whole body of → States forms the legislative organ, and the individual States are its parts. The executive organs are in general the individual States and not the whole body of States. This is a case of *dédoublement fonctionnel* (Scelle).

By contrast, when we speak of an international organization as an organized association of States with organs, we refer to a system with special organs having defined functions, and these organs are of the organization itself and not of the member States, even though composed of the latter. These organs can be legislative, executive or judicial. In most cases, however, an organization does not have organs for all functions, and often has an organ for only a part of a function, for example in the legislative sphere, an organ to determine facts and to draft a text to be recommended to the member States for adoption as a treaty. The executive function is mostly a matter reserved to the States. In many cases, the organization's powers are limited and there is little centralization; we are dealing here with a rudimentary form of organization.

In distinguishing international organizations from constitutional associations of States, of which → federal States are the principal form (→ Federalism in the International Community), the following factors are not conclusive: (1) The basis of establishment: A federal State can also be established by treaty, which lapses when the purpose, i.e. the setting up of the State, has been carried out (e.g. the North German Confederation (1867), the German Reich (1871)). (2) The manner in which powers are distributed: International organizations can also be empowered, though they rarely are, to make decrees which are directly binding on the individual (→ Individuals in International Law), to impose taxes, and to wage war, and can involve limitations on the constitutional autonomy of the member States; conversely, it is possible in federal States for the financial requirements to be met by contributions, and for the constituent States to be obliged to provide military contingents and to have the right to secede (→ Secession). (3) Legal personality: It is nevertheless incorrect to maintain, as some writers do, that there is no difference in principle between an association of sovereign States such as an international organization and a federal State. The distinction is admittedly one of degree, and quantitative in nature but an international organization lacks some of the chief characteristics of a State, namely a high level of centralization, the assertion of exclusive legislative and executive power, and the monopoly of the use of force. These set the two entities clearly apart. State constitutions also belong to the category of authoritative legal norms which have been decreed unilaterally and are not contractual; the rules of international law concerning the commencement, interpretation (→ Interpretation in International Law) and termination of treaties therefore do not apply to them.

C. Membership

Membership is restricted to States, including dependent States with limited legal capacity, and can be either full or with limited rights (→ International Organizations, Membership). One form of the latter type of membership is association, as found in the → European Communities (→ European Economic Community, Association Agreements) and as it existed for a time in the → Council of Europe and the Organisation for European Economic Co-operation (OEEC) (see → Organisation for Economic Co-operation and Development).

International organizations must be distinguished from → non-governmental organizations. The latter's members are autonomous public and private corporations and associations from different States. The purpose of non-governmental organizations is to promote cooperation between their non-State members.

In the same way as for multilateral treaties, international organizations are either open for or closed to accession by further States.

"Open" organizations are open for accession by all States or only by States belonging to a certain group, for example by European States. Further, accession can be provided for unconditionally or only subject to the fulfilment of certain con-

ditions. These conditions may be of a formal nature, such as invitation by the organization, approval by a specified organ or conclusion of a special agreement, or substantive, as when the State acceding must be "peace-loving" or "democratic".

Conditions are always imposed in the case of closely-integrated organizations, since the composition of their organs and their voting rules (→ Voting Rules in International Conferences and Organizations; → Weighted Voting) are very finely balanced in order to maintain a particular equilibrium.

The right of individual member States to withdraw from the organization may be either expressly granted or expressly excluded. In the latter case, withdrawal, which is to be equated to termination by notice (→ Notification), may be possible either at any time or only after the lapse of a specified period of time, or only when certain conditions are satisfied. There can, moreover, be provision for exclusion from the organization as a → sanction.

Insofar as the constituent treaty does not provide for withdrawal, the question is one of the intention of the parties, that is to say, of interpretation of the treaty. The parties could conceivably have by implication intended a possibility of termination through notice. By customary international law, members have the right to withdraw wherever the organization can take binding decisions by a majority and impose new responsibilities on member States. The right to withdraw may only be exercised, however, if such a decision has been made. An exclusion of the right of withdrawal in such a case would need to be expressly provided for in the constituent treaty or be otherwise shown to represent the intention of the member States.

The right of withdrawal is in general a contradiction of the purposes of the organization. It would accordingly appear to be desirable to have a procedure for revision (→ Treaties, Revision) which allows for the constituent treaty to be adapted to changed circumstances and thus prevent situations from arising which might induce a State to withdraw.

D. Universal and Regional Organizations

A distinction must be made between universal or global, and regional organizations (see articles on → Regional Cooperation and Organization). Since regional organizations only embrace a limited group of States which generally have similar interests and political philosophies, their structure can be more highly centralized and elaborate than in the case of an organization which includes nearly all the States in the world. For this reason regional organizations can be more effective and exercise greater influence. The disadvantage is that they lead to fragmentation of the international community and promote the formation of blocs. The risk of fragmentation and the attendant possibility of creating local and disparate norms (cf. → Regional International Law) is a particular threat to the → judicial settlement of disputes, since the development of international law should proceed uniformly throughout the international legal community. Difficulties can also arise as between regional and universal organizations in defining their respective powers, which may lead to conflicting duties for States. The UN Charter encourages regional organizations, but assumes that the → United Nations Organization itself has priority over them (Chapter VIII of the Charter; → Regional Arrangements and the UN Charter).

E. Political and Non-Political Organizations

A distinction can be made between political and non-political organizations according to the subject-matter with which they are concerned. Political organizations include those for → collective security, the maintenance of peace (→ Peace, Means to Safeguard), the → peaceful settlement of disputes and → alliances; non-political organizations deal with particular technical matters, such as the → Universal Postal Union and the → International Telecommunication Union (see → International Administrative Unions). "Political" is used here in the narrower sense of matters concerning the power relationship between States (→ International Relations). The maintenance of modification of an existing power relationship are political aims. The dividing line between the two types of organization is often fluid: Numerous organizations, the purposes of which are primarily economic, also have political features (e.g. the European Communities; → Council for Mutual Economic Assistance

(Comecon)), and primarily political organizations often pursue numerous other aims in addition (e.g. UN, → Organization of American States). Non-political technical organizations have often been misused by States for improper political purposes.

F. History

International organizations are a product of the most recent times. Neither the associations of States which existed in antiquity, in the Middle Ages and in the modern era, nor the various plans for a general peace organization (Abbé de Saint-Pierre, Penn, Kant) had any direct influence on their development (→ Peace, Historical Movements towards).

Precursors of the universal organization can be seen in the Holy Alliance as well as in numerous European congresses and conferences for the settlement of political questions (→ History of the Law of Nations). The catastrophe of World War I led to the founding in 1919 of the → League of Nations as a universal organization for the maintenance of world peace, based on the principle of collective security, and for the settlement of disputes between States. The League did not attain universality, however, and was unable to prevent World War II. It was replaced in 1945 by the UN, to which at the present day nearly all States – the number of which now exceeds 150 – belong. The purposes of the UN are the same as those of the League. In order to increase its effectiveness, the organization was equipped with a permanent organ, the → United Nations Security Council, which has power, in the event of threats to or breaches of the peace (→ Peace, Threat to; → Use of Force), to order measures binding on all member States (→ United Nations Peacekeeping System). This can only happen, however, if the → Great Powers all agree.

The UN, as with the League of Nations before it, also has economic, financial, social and cultural objectives.There are, in addition, numerous special organizations of a non-political character in these fields, the powers of which are confined to their particular subject-areas. Their origin lies in the administrative unions of the 19th century (the International Telegraphic Union (1865); the Universal Postal Union (1874); the International Convention on the Carriage of Goods by Rail (1980), see → Railway Transport, International Regulation). The → International Labour Organisation came into being in 1919 along with the League of Nations, the constituent documents of both organizations forming parts of the → Versailles Peace Treaty. It was only after World War II, however, that a large number of universal specialized organizations were established, most of which are loosely linked to the UN (→ United Nations, Specialized Agencies). This development was the product of the increasing → interdependence of States.

The idea of an organization limited to a particular region was first put into practice on the American continent with the Pan American Union of 1890, which became the Organization of American States (OAS) in 1948. In this field, too, the real growth only occurred after World War II. Thus, the Arab League (→ Arab States, League of) was founded in 1945, the → Organization of African Unity (OAU) in 1963 and the → Association of South East Asian Nations (ASEAN) in 1967. All these organizations have non-political as well as political purposes. Numerous attempts to form regional organizations have ended in failure, however, and the effectiveness of existing regional organizations has mostly proved to be limited.

The first concrete proposals for the unification of Europe (→European Integration; → European Unification) were made by Graf Coudenhove-Kalergi in 1923, and this aim was pursued by the private Pan European Union which he founded. A plan of the French Foreign Minister Aristide Briand for a loose European organization within the League-of-Nations framework failed in 1930, primarily because of Great Britain's antipathy towards it. It took the weakening of Europe through World War II to produce new initiatives, which were supported by strong popular feeling. The aim was for a European Confederation or a federal "United States of Europe". Two alternative approaches were put forward: the federalists sought to achieve this goal in one step through the formation of a single organization with general powers, while the functionalists argued that one should proceed in stages through the creation of different organizations to deal with particular subjects, which would ultimately and necessarily lead to general integration. The six countries of France, the Federal Republic of

Germany, Italy, Belgium, Holland and Luxembourg developed a new, closer form of association alongside the classical type of international organization, namely the → supranational organization. The traditional European organizations include the OEEC (1948, converted in 1960 to the Organisation for Economic Co-operation and Development (OECD)) the Council of Europe (1949), the → Western European Union (WEU) (1954) and the → European Free Trade Association (EFTA) (1966). The supranational organizations include the European Coal and Steel Community (1951), the → European Economic Community (EEC) (1957) and the → European Atomic Energy Community (Euratom) (1957). The → European Defence Community collapsed in 1954 when the French National Assembly rejected it and this brought down the → European Political Community as well, the constitution of which had already been drafted. All of today's European organizations are composed of differing numbers of States. The Conference on Security and Cooperation in Europe (CSCE), which led to the Helsinki Final Act of August 1, 1975, did not give rise to any permanent organization (→ Helsinki Conference and Final Act on Security and Cooperation in Europe).

The process of European integration is in a state of stagnation at the present day: The forces of nationalism and the unwillingness to accept further restrictions on → sovereignty grew stronger as the European States recovered more and more after 1955. European unification has remained patchy.

II. COMPETENCES

A. Formal Division of Competences

Originally, the principal competence of international organizations was to provide the technical organization which made international cooperation in a purely factual sense possible. An apparatus was set up to give this cooperation permanence (→ International Secretariat). This aspect is still prominent in the powers and objects of today's international organizations.

In general, powers are divided in such a way that the legislative and in some cases the judicial power lies with the organization, but the executive power, i.e. the power of enforcement, rests with the member States (the principle of the *imperméabilité* of States). The internal administration of the organization itself forms an exception to this, as do allocations of technical and financial support. Only the supranational organizations have wider powers.

One special feature of international organizations is that in many cases they exercise only part of a particular function. Thus their role in law-making functions may be confined to the collection of materials, clarification of the factual situation by means of questionnaires to governments, investigations (→ Fact-Finding and Inquiry), producing the text of a treaty or merely a draft for a special diplomatic conference (→ Congresses and Conferences, International). The law itself is made by the member States through the conclusion of a treaty, or by the enactment of national laws in identical terms.

The distinction between law-making (→ International Legislation) and law implementation (→ International Obligations, Means to Secure Performance) or, in other words, between general or abstract rules and individual decisions or specific rules is of secondary importance for international law. The constituent treaties of international organizations themselves usually deal exhaustively with the rights and duties of member States, so that little scope remains for law-making. Moreover, since the international legal community, by contrast with the legal community of the State, consists of a limited number of subjects whose positions differ considerably from one another, the particular, individual situations preponderate over the general, typical situation. The solution of particular questions, such as the peaceful settlement of disputes, is frequently more important than the establishment of general rules, so that special law-making for the individual case becomes a prominent feature of the legal activity of international organizations.

It is essential to distinguish in principle between binding and non-binding legal acts, that is to say, between decisions which have binding force and recommendations which do not. The legal activity of international organizations consists primarily of issuing non-binding decrees (recommendations). Terminology used in the constituent treaties is not conclusive. Also usage of the concepts is not

uniform, so that, for example, in the ECSC there are wrongly called "recommendations" while the UN has "resolutions" (→ International Organizations, Resolutions).

B. Material Division of Competences

In general, the constituent treaties lay down the objects and purposes of the organization, and sometimes also the means to be used and in general terms the powers of the organs (though not of the organization itself) to achieve them. From those two sets of provisions the organization's powers in relation to the member States are derived.

In view of the unstructured character of international organizations, it would seem to be self-evident that their powers should be spelled out systematically, and any matter not referred to should remain within the jurisdiction of the member States. In cases of doubt → domestic jurisdiction should in principle prevail. This follows from the nature of the international community as one composed of sovereign States. The principle of interpretation in international law, by which restrictions on the freedom of States (here the duties of member States and the powers of the organization) are to be interpreted restrictively, applies. This principle, however, has to be reconciled with that of the *effet utile* (→ Effectiveness); a restrictive interpretation of a treaty clause must not render ineffective the limitations and duties intended by the parties and provided for by the treaty. It is thus to be presumed that the parties intended a reasonable result and not a pointless one.

The principle of the *effet utile* also gives rise to the existence of implied powers (→ International Organizations, Implied Powers). If the end is intended, so also must be the means to attain that end. If the means are not defined in the constituent treaty, they must be implied (for example, rules concerning the organization and procedure of the organs, or the position of international civil servants (→ Civil Service, International)). Implied powers have been expressly recognized by the → International Court of Justice, in the → Reparation for Injuries Suffered in Service of UN (Advisory Opinion), and by the → Court of Justice of the European Communities (CJEC). This principle should only be applied sparingly, however, and only those powers should be implied which least affect the freedom of member States and which are shown to be necessary in order to fill genuine technical gaps in the treaty.

As a guarantee against excess of power on the part of the organization, certain powers are expressly excluded in many cases, although such provisions appear unnecessary in fact. Under this guarantee States enjoy something in the nature of fundamental rights (→ States, Fundamental Rights and Duties). The reservations of domestic jurisdiction (Art. 2(7) of the UN Charter) and → self-defence (Art. 51 of the UN Charter), the exclusion of matters relating to national defence (Council of Europe Statute, Art. 1(d)) and the national regulation of questions of ownership in the case of the European Communities are examples of such fundamental rights.

III. ORGANIZATION

A. General

The character of an international organization depends on the nature of its organs. From the legal point of view, organs can be classified according to their composition, powers, sphere of operation, origin and voting procedure. All kinds of combinations are possible. Certain typical forms of international organization have been developed in State practice that are distinguished according to the form of the principal organ of the organization.

The classical type of international organization possesses organs composed of States with authority to make recommendations by a majority or to take decisions binding on the members by unanimous vote. Certain organizations go one stage further, in that – at least on certain matters – binding decisions can be taken by a majority (as in the UN Security Council under Art. 25 of the Charter).

Supranational organizations possess organs composed of individual persons not subject to the instructions of their governments, which can take decisions directly binding on member States or even on individuals. To a large extent these organizations have their own means of implementation. Such an organization comes close to having the form of a federal State but does not amount to one; on the contrary, it remains an

international organization on a par with other organizations. The Zollverein (German Customs Union) and the European Danube Commission (→ Danube) belonged to this category, as do the ECSC, the EEC and Euratom now.

The borderline between the two types of organization is a fluid one, however. Elements of supranationality can also be found in classical international organizations. Judicial institutions, for example, are always composed of persons not subject to the instructions of their governments (→ International Courts and Tribunals); the decisions of courts have legal force for States, and in certain cases even for individuals. It is an indication that an organization has a supranational character if an organ composed of States can take decisions binding on the member States, particularly if this can be done by a majority. Supranational elements are to be found in the General Conference and Governing Body of the ILO and in the Assembly of the Council of Europe relative to their composition. However, these elements were developed further only in the European Communities.

It is incorrect, however, to speak of a surrender of sovereignty and a transfer of rights of sovereignty to a supranational organization. Sovereignty in the legal sense means simply the exclusive and immediate status of a → subject of international law, if one disregards the absolute sovereignty which only international law enjoys as the supreme legal system. Sovereignty as a substantive legal concept does not allow of exact definition, since its meaning has varied in the course of history, whereas sovereignty in the concrete sense of the authority of the State is indivisible in nature and must not be confused with the exercise of particular powers. The transfer of powers to international organs in no way changes the legal status of the member States. They continue as before to be subject only to international law, since the constitution of the organization itself remains a treaty. This position would only change if the organization were converted into a federal State.

If sovereignty is understood in its political sense of the freedom of the State to ensure the maintenance of its existence, to fulfil the essential functions of Statehood and to dispose of the necessary means to this end, one can again not speak of the surrender or transfer of sovereignty. The decisive power continues to be concentrated in the hands of the States.

It is therefore correct to say that, in the case of supranational organizations, the → jurisdiction of the member States is limited by treaty and that certain powers are conferred upon international organs, which may be free from the influence of the member States in certain circumstances. The decisive factor remains the organization's basis in international law; and here there is no limitation of sovereignty in the legal sense of the States' losing their status as subjects of international law. A surrender of sovereignty in the political sense is theoretically possible for the future.

The establishment, procedure and powers of the organs are all matters for the constituent treaty. Further organs may, however, also be established by decision of the existing organs. The authority to do this may be expressly conferred by the constituent treaty or implied from it.

The principle of separation of powers only applies within international organizations to a limited extent. Thus, one finds independent judicial organs and internal administration, but on the other hand, legislative power, external enforcement and the most important acts of internal administration (the budget), are usually concentrated in a single organ. This results firstly from the minor role of the distinction between general and particular legislation; further, from the fact that in general there is no power to take binding decisions, or at any rate not unless the members support them unanimously; and finally, from the absence of any necessity to protect the subjects of the law from attacks on their freedom, as States are powerful enough to safeguard their own rights and interests.

In a broader sense, the member States themselves also constitute an organ of the organization.

B. Classical International Organizations

In general, classical international organizations have three organs, namely a principal (plenary) organ, a non-plenary organ and an administration. Special features occur in the case of organizations which have primarily economic objects, such as the → Bank for International Settlements and the → European Company for the Financing of Railway Rolling Stock (Eurofima). Such organizations are largely based on the model of a commercial company.

The principal organ, called variously general

assembly, assembly, council, conference, etc., is not a permanent organ (except for the Council of the OECD). It meets relatively infrequently, though generally at periodic intervals.

It is composed either of all member States, or, where the members are individual persons, of delegates of all member States who are subject to the instructions of their governments. States are in general free to send politicians (ministers) or civil servants (diplomats). It is basically an organized diplomatic conference (→ Diplomacy; → Diplomatic Agents and Missions).

The principal organ can set up commissions which again consist of all the member States in many cases.

As a rule, there is only one non-plenary organ, generally called council, executive committee, council of administration, council of governors, or directorate. Certain organizations such as the UN, for example, possess several non-plenary organs dealing with different matters. There need not, though, be a non-plenary organ (as, for example, in the Council of Europe and the → European Organization for Nuclear Research (CERN)).

The non-plenary organ is likewise generally composed of States or State delegates, though only of a limited number (an exception being the organs of the OAS, which consist of all member States). In some cases, however, it is composed of other individuals, in particular when it is considered important that it should consist of experts or representatives of particular interests. However, the members of the organ are still appointed by the member States, with the constituent treaty or the plenary organ determining which States have a right to participate in making the appointments.

The plenary organ may have a completely free hand in the appointment of members to the non-plenary organ, or the appointments may have to satisfy certain criteria, or the composition of the organ may be wholly or partially laid down in the constituent treaty. These various possibilities are often combined.

The non-plenary organ meets more frequently than the plenary organ and is often established as a permanent organ.

The administrative organ, generally called secretariat, bureau or office, forms a permanent executive. It has a hierarchical structure with a head responsible for it, who is called a secretary-general, director-general, etc.

The functions of the administration are as follows: to perform the work of the secretariat proper (minutes, records, etc.); to act as an organ of communication, information and → consultation for member States; to prepare the business of the other organs (inquiries, reports); to propose action (this enables the administration to act on its own initiative, to the extent of even exercising a political function in some circumstances); to represent the organization externally; to implement decisions of the organization, which can include setting up political missions; to act as the office for the deposit and registration of treaties (→ Treaties, Registration and Publication; → Depositary); to deal with financial matters.

The head of the secretariat is usually appointed by the plenary organ. He appoints the personnel, and in making appointments he should have regard principally to the merit of the applicants, but must also take into account the member States' financial contributions and the geographical distribution of appointments.

In every case the personnel are independent of instructions by member States. They may not accept such instructions, nor may member States give them. They are only subordinate and responsible to the organization. They can therefore properly be described as international civil servants.

In most organizations, subsidiary and auxiliary organs are established to prepare certain types of business or to implement decisions of the major organs. The most important of these are commissions of experts. Examples are the numerous horizontal and vertical technical committees of the OECD and the integrated military commands of the → North Atlantic Treaty Organization (NATO).

In a few cases the organization has a court or an arbitral tribunal (→ Arbitration). However, jurisdiction over disputes can also be given to the judicial body of another organization.

An innovation has been made in constituting parliamentary assemblies in, for example, the Council of Europe and the Western European Union. Unimportant exceptions apart, they have purely consultative powers. It is not the "people" of the organization who are represented in them, but the peoples or parliaments of the individual

member States, as the method of election (appointment by the national parliaments) shows (→ Parliamentary Assemblies, International).

C. Supranational Organizations

In the case of supranational organizations, we find a combination of organs composed of States and supranational organs. The organizations of this type in existence at the present day (i.e. those of the European Communities) possess a supranational executive authority (commission), an organ (council) composed of States, a parliamentary assembly, a court of justice and further organs with consultative powers.

The executive organ consists of a number of persons who are independent of their governments and may not seek or accept instructions from them. The States must respect their independence and refrain from any attempt to influence them. Almost without exception the members of the executive are appointed by the governments jointly, in other words, unanimously. The executive is a permanent and full-time body.

In the European Communities, the Council consists of representatives of the member States who are in fact members of their governments (ministers); it is supported by a committee of permanent representatives composed of civil servants. The members of the Council are bound by the instructions of their governments. The Council is a diplomatic organ, similar to a conference of States. The Council is not a permanent body, meeting only at irregular intervals.

The Assembly of the European Community consisted originally of deputies elected by the parliaments of the member States according to their own procedures. Pursuant to a Community Act of September 20, 1976, the members of the European Parliament are now elected in general and direct popular elections, held simultaneously in each member country but governed by national electoral laws; the first such election was held in 1979. The members of the Parliament are not subject to instructions from their States' governments and vote individually.

The constituent treaty lays down the number of seats to which each member State is entitled. The numbers are calculated on the basis of population, but are weighted in favour of the smaller States in order to avoid an excessive concentration of voting power in the hands of a few large States and to ensure the proper representation of the various political opinions. The European Parliament is now common to all three European supranational organizations.

The defunct European Political Community made provision for its own parliament, composed of a lower house elected by direct popular vote and a senate elected by the national parliaments.

The Court of Justice of the European Communities consists of judges appointed jointly and unanimously by the governments of the member States for a term of six years. They are completely independent of the governments and must be appointed from the ranks of qualified lawyers (those who hold the highest national judicial posts or are recognized jurisconsults) whose independence is beyond question. The Court is a permanent organ and again is common to all three supranational European Organizations.

D. Relationship of the Organs to Each Other

1. Classical International Organizations

In classical international organizations, the organs can be of equal rank or be arranged hierarchically, and both possibilities can apply to the same organ in different spheres of operation.

Equality of rank is shown by the independent exercise by each of its particular, distinct powers, or of identical, concurrent powers, or in the joint exercise of common powers.

A hierarchical structure can manifest itself through the superior organ's having a right to supervise and control the subordinate organ and to give instructions and delegate powers to it. The fact that one organ is created by another organ does not necessarily mean that it is subordinate to that organ.

The extent of an organ's powers and the system of distribution of powers must be taken into account. Formally, a hierarchical structure has the effect that one organ has the power of decision, while the other has only a consultative role or the power to make proposals. As far as subject-matter is concerned, one organ (either the plenary or the non-plenary organ) can enjoy more general scope than the other, and there is usually also a corresponding separation of particular powers. The subordinate organ often has no original

powers, but only derivative or delegated powers. Cases also exist where the various possibilities are combined.

The secretariat is always a subordinate organ, responsible mostly to the non-plenary organ, although in certain cases it is directly responsible to the plenary organ or both organs together. As a general rule, the non-plenary organ is subordinate to the plenary organ. Judicial organs are always of equal rank with the others.

The general rule is that collaboration between the organs, principally between the plenary and the non-plenary organ, is obligatory. The fact that collaboration is prescribed does not indicate whether the organs are of equal rank or hierarchically arranged, since collaboration is possible under either system.

Sometimes action by both organs is necessary for the validity of a legal act. This takes the form either of concurrent decisions by the two organs or of a recommendation by one first being required for a decision by the other. The commodity organizations (under the International Sugar, Wheat and Tin Agreements; → Commodities, International Regulation of Production and Trade), for example, have a type of bicameral system with separate decision-making by exporting and importing States.

Optional collaboration consists of the right, but not the duty, to make proposals, or of the power of one organ to consult another.

2. *Supranational Organizations*

The relationship between supranational organs and organs composed of States is of great importance. The same organ can be superior, subordinate or equal to the other in different areas of its jurisdiction. Only by considering the organization as a whole can it be seen which organ is the main one, and for this inquiry the political background and the way the powers are exercised in practice must also be taken into account in addition to examining the legal structure of the organization. Regard must be had not only to the extent of the matters falling within the organization's jurisdiction but also to whether the organ concerned can, for the most part, take binding decisions or not.

Whereas in the case of ECSC one can at least speak of the Commission and the Council as having equal rank – since there is no hierarchical subordination of the Commission to the Council, and the Commission can to a large extent take binding decisions – in the case of Euratom and, to an even more marked degree, of the EEC the Commission appears to be subordinate to the Council. There, the principal share of the decision-making powers is held by the Council and the Commission has primarily initiatory and executive functions.

The European Parliament exercises some parliamentary control, in that it can bring down the Commission through a vote of no confidence. The Commission also has the duty of answering deputies' questions. The examination of the annual report and the Parliament's power to force the Commission's resignation produces a sort of subordination to the Parliament, but of a weak kind, since the Parliament has no voice in the re-election of the supranational organ and has only limited rights with regard to the budget.

The Parliament cannot exercise effective control over the Council, since the Council represents the member States' governments and is composed of members of those governments, who are in turn responsible to their national parliaments.

Finally, judicial control replaces political control not only with regard to the supranational organ, but also in respect of the Council, although this is restricted to questions of law.

Collaboration between the organs is also the general rule here. Obligatory collaboration is stipulated in particular for the Council and the supranational organs. In Euratom and the EEC the requirement to consult with the Parliament is stronger than in the ECSC.

In the case of the ECSC the principal powers lie with the Commission, but consultation with, or the agreement of, the Council is necessary for all the more important decisions. Conversely, the principal powers lie with the Council in Euratom and the EEC, but the Council is nearly always required to have before it a proposal by the Commission and to consult the Parliament before taking a decision. Such proposals can only be amended by a unanimous vote of the Council; otherwise, the decision must be in the terms of the proposal or it cannot be taken at all.

Collaboration between the political and supranational organs is particularly important for

the success of the work and development of the organization, since the political organs represent the interests of the individual States while the supranational ones represent the interests of the Community, and the two must be reconciled. Thus, collaboration in the form of a mutual exchange of information and of consultation is expressly provided for as a general principle in the constituent treaties.

E. Legal Personality

Whether an international organization possesses legal personality (→ Subjects of International Law) in international law is a question of positive law and depends upon its constituent treaty. States are therefore free to accord legal personality to an organization, or to withhold it.

Most international organizations enjoy legal personality, either provided for expressly in the constituent treaty or – as is normally the case – following from the powers or the aims and objects of the organization and the practice of its organs. According to the ICJ's Reparation for Injuries Suffered in Service of UN Advisory Opinion (ICJ Reports 1949, p. 174 at p. 179), legal personality exists if an organization is capable of possessing international rights and duties and has the capacity to assert its rights, if it has its own organs and if it could not discharge its functions without legal personality.

In contrast to States, which are characterized by unlimited legal personality, the legal personality of organizations exists only within the limits of their objects and functions, since it is defined not by general international law but on the basis of the constituent treaty.

An organization possessing legal personality also has responsibility in international law (→International Organizations, Responsibility). The duty to make → reparation for internationally wrongful acts is the correlative duty to the right, recognized by the ICJ, to claim reparations. However, responsibility goes further than the organization's rights, since these only exist within the limits laid down in the constituent treaty, whereas the organization's responsibility extends to cases where it has exceeded its powers or acted in breach of the treaty.

Whereas the legal personality of the organization exists clearly in relation to the member States, the same does not apply in relation to third States, since the constituent treaty neither confers rights nor imposes duties upon them (→ Treaties, Effect on Third States). The decisive factor is again that an international organization – unlike a State – is not based on general international law, but on a treaty. In contrast to a State, → recognition by third States would therefore appear to be necessary; it would then have constitutive effect. It can be granted expressly or by implication, for example by the conclusion of treaties or by the establishment of diplomatic relations (e.g. diplomatic missions to the European Communities; observers at the UN).

Virtually all international organizations are also legal persons under municipal law. To this extent they have the capacity to own and dispose of property and to litigate. This is essential for them to carry on their operations. It is a guarantee for the effective functioning of the organization, like the right of immunity; thus, this guarantee as well as questions of immunity are often provided for in the same rules (→ International Organizations, Privileges and Immunities).

Legal personality is almost always expressly conferred on the organization in the constituent treaty, either by a general provision or by the listing of particular rights. Detailed provisions are frequently contained in a separate treaty. Their rights at the municipal law level only extend as far as the purpose and functioning of the organization require; this is generally expressly stated. Otherwise, national law governs.

IV. INTERNATIONAL ORGANIZATIONS AND MEMBER STATES

A. Collaboration

Since international organizations are associations of States, it necessarily follows that the member States collaborate in the activities of an organization. This collaboration seems obvious in the case of classical organizations and is central to the nature of such organizations, but it is less prominent in the case of supranational organizations. Clarification of the extent of collaboration would therefore seem to be of particular importance in the latter case.

Collaboration takes two forms: Either the member States constitute parts of one particular

organ of the organization, having a defined function, or they act independently as parts of a non-specialized organ, not confined to any particular function (in other words, as parts of the community of States formed by the organization).

Collaboration can take place through several different means:

1. Creation of Non-Plenary Organs

This is done either directly by the governments, acting unanimously or by a majority, or in another organ composed of the member States, generally by a majority. The composition of the non-plenary organ may be at least partially prescribed in the constituent treaty; also the collaboration of other bodies may be required.

2. Collaboration in the Organs

This occurs in the organs composed of member States, and is the general rule in the case of the classical organizations, where the plenary organ is always composed of States and the non-plenary organ is usually similarly composed.

In the case of supranational organizations, a special organ is provided, namely the council, in which the member States collaborate. The council's function is to coordinate the policies of the member States *inter se* and with the supranational organ. It has the further power to make proposals to the supranational organ or even to give it directions, as well as the right to be heard by it. The dominant organ in the process varies from case to case, depending on the constituent treaty and the manner in which it is applied in practice.

3. Implementation

We are concerned here with the implementation of the constituent treaty itself or of decisions of the organs. Apart from internal administration and technical and financial assistance, implementation is always a matter for the member States in the classical organizations (the principle of *imperméabilité* of States). The States thus form the executive organs of the organization.

In the case of supranational organizations, implementation is also largely a matter for the member States, though it is also in part a matter for the supranational organ. The treaties also contain provisions which enable the organizations to prescribe binding objectives for the member States but leave them the choice of ways and means to achieve them ("recommendations" in the ECSC, "directives" in EEC and Euratom).

4. Direct Decision-Making in the Organizations

In this instance the member States are acting directly in concert, and not merely collaborating in one of the organs. Formally, there is, then, no decision by the organ but instead a treaty, and the normal legal procedures for treaties apply. Frequently, a simplified procedure is used, with the plenary organ drafting the text which is then open to accession by the member States without the necessity for signature and ratification. Treaties of this kind are concluded between the member States, but can also include the organization, which then becomes a party to the treaty in the same way.

This process is the general rule for law-making in the classical organizations. The organization can only issue recommendations, initiate a process, organize a diplomatic conference or draft the provisions to be adopted.

Direct collaboration also plays a part in the case of supranational organizations. In addition to the conclusion of treaties, provision is also made in them for informal consultation, cooperation, coordination and common action by members.

The question arises whether these direct collaboration measures are really acts of the organization. There is without doubt a substantial connection. Apart from its participation in bringing the act into existence, the organization frequently receives certain powers of control and administration through the treaty, which will usually be deposited with it. The functions of the member States as parties to particular treaties are moreover generally provided for in the constituent treaty of the organization or in its objectives. The member States thus act as organs of the community formed by the organization, though not of course as special organs with a defined function. Specific international law, in the form of the constituent treaty, and general international law overlap at this point. A peculiarity of this situation is that law can be made in this way which, unless otherwise provided, need not apply to all member States, but only to those who have ratified the treaty, and which can extend beyond

the constituent treaty, since it is in general on the same level as the constituent treaty.

B. Equality and Inequality

International law is based on the principle of the legal equality of States (→ States, Sovereign Equality). This is not because of some fundamental right of States (→ States, Fundamental Rights and Duties; cf. → Friendly Relations Resolution) but is the logical consequence of sovereignty and independence (→ Territorial Integrity and Political Independence). It should be noted that this principle contains two elements, namely equality before the law on the one hand and functional equality on the other hand, that is to say, the right of States to participate equally in international law-making and administration and in the activities of international organizations.

Alongside this legal equality stands the factual inequality of States, particularly with regard to political (→ Power Politics) and economic strength. International law must also take these differences into account. This applies principally to functional equality. Thus, international organizations in general follow the principle of equality, but with numerous exceptions, primarily where functional equality is concerned. These exceptions are considered justified since the larger States contribute more and have to bear the chief burden of responsibility. The situation must therefore be avoided in which a majority of smaller States could impose far-reaching decisions on a minority of larger States that would then have the principal responsibility for carrying out the decisions.

There are various possible ways of allowing inequalities to be reflected institutionally:

1. Composition of Non-Plenary Organs

Certain States enjoy a privileged position to the extent that they must always be represented in the non-plenary organ. This may be accomplished either by listing the names of these States in the constituent treaty, or by establishing particular criteria favourable to a similar result (such as geographical distribution, extent of capital contribution, or level of industrial development). The privilege is less pronounced in the second type of case, since changes occur within a category and a State can drop out or a new one may be added.

2. Right of Veto

For certain decisions the agreement of specified States is required (cf. → Veto). Here again, the States in question are either expressly named or defined by reference to some particular characteristics.

3. Graduated Voting Rights

Normally each State possesses one vote. However, certain States can be given more votes or have several delegates, each with one vote (→ Voting Rules in International Conferences and Organizations; → Weighted Voting). The problem here is the choice of criterion on which to base the graduated voting system:

(a) Financial contributions: This method is found in the case of organizations with economic and financial objectives and is appropriate for them.

(b) Commercial performance: This criterion is used in the commodity organizations in which the amount of imports and exports is decisive.

(c) Population size: This system is used in distributing the seats in parliamentary assemblies. However, since the differences between States are very large it can only be applied to a limited extent, and must be weighted in favour of the smaller States.

(d) A combination of various criteria: The importance of a State does not depend upon its population size or territorial extent alone, but primarily upon its political and economic significance. However, it is extraordinarily difficult to express these factors in figures, since there are various considerations which must be taken into account. Further obstacles are presented by the need of States for prestige and by changes that occur in the course of their development. The intellectual and cultural level of advancement should also be taken into account. In spite of all the difficulties, a combination of criteria would produce the most just system. In practice, the allocation of votes in the constituent treaty must be the result of → negotiation between the parties. One solution might also be to establish several organs with equal powers but different voting arrangements.

(e) Admission of non-sovereign entities which are controlled by other States: These include → colonies, dependent territories and the con-

stituent states of a federal State. In this way the controlling State receives several votes. Thus, as a result of the membership of the Ukraine and Byelorussia, the Soviet Union possesses three votes in the UN (→ Soviet Republics in International Law).

4. Financing the Organization

In this connection, the economic inequality of States is always taken into consideration, with contributions generally fixed according to national income. There are various methods for calculating contributions on this basis. In order to prevent the richest countries from exercising too great an influence, an upper contribution limit is set (→ International Organizations, Financing and Budgeting).

V. FUNCTIONS

A. Legislative and Executive

The following special features should be noted here: Compared with the position at the national level, legislation is of lesser importance, since as a general rule the constituent treaties contain the complete substantive law of the organization, and sometimes in considerable detail. The distinction between general or abstract norms and individual or concrete norms (in other words between statutes and acts of administration) is fluid and therefore of lesser importance. The organization frequently possesses only a partial legislative function. From this last feature follows the need to distinguish between non-binding and binding legal acts.

1. Non-Binding Acts

Non-binding legal acts have the purpose to bring about a particular form of action, or, negatively, an abstention from action on the part of the member States, without any obligation on them to comply. Non-binding legal acts can be addressed to all member States, to certain members, to a single member or to an organ of the organization. They constitute the principal type of action by classical organizations and are found in three forms:

(a) Recommendations in a narrow sense: These are not binding on member States. States are thus free to comply with them or not. This applies also to those States which concurred in the making of the recommendation, unless they have expressly declared an intention to be bound. In that event there is a unilateral legal act by the State concerned (→ Unilateral Acts in International Law). Recommendations can be legally significant, however, for the interpretation of international law, particularly with regard to those States which concurred in them. Recommendations also carry political weight, depending on their content, degree of objectivity and the majority by which they were adopted. The effect can, moreover, be strengthened where existing or *ad hoc* organs are given the task of control or observation (→ International Controls).

(b) Recommendations having legal effect: Noncompliance results in certain legal disadvantages, although the recommendation as such is not binding.

(c) Recommendations which produce formal procedural obligations: The States remain free under substantive law, but they have a duty to lay the recommendation before the appropriate internal authority with a view to its implementation and to report back to the organization on the extent of compliance with the recommendation (→ Reporting Obligations in International Relations).

2. Binding Acts

Binding legal acts are divided into: (a) Recommendations, acknowledged to be binding by a special → declaration by certain States: Such a declaration can be made before or after the adoption of the resolution, usually in the form of a treaty. This is an instance of a composite act: It becomes binding through recognition by the State concerned, whether unilaterally or in a treaty. This form plays an important part in the practice of the UN. (b) Decisions, the aims of which are binding on the member States, though not the ways and means of achieving those aims: This new form occurs in the supranational European organizations. (c) Binding decisions, but with member States having the right to reject them within a specified period: The decision does not come into force for a State which has in the meantime rejected it. (d) Binding decisions, which oblige member States fully to carry them out: they can be either general or particular norms.

(e) Binding decisions, which create rights and duties directly for individuals and not merely for States. Such decisions occur principally in the case of supranational organizations and breach the *imperméabilité* of States (→ International Law and Municipal Law; see especially: → European Communities: Community Law and Municipal Law); they are enforced in part with the organization's own implementation machinery.

B. Decision-Making and Voting Procedures

The requirement of unanimity in the decision-making process follows from the doctrine of the equality and sovereignty of States; no State can be bound without its consent. This principle, which used to be the general rule, is in practice frequently applied for political reasons to organs for which a majority voting system would be adequate. The agreement of all parties is preferred to reaching decisions on a vote. It must be emphasized that even a unanimous decision is an act of the organization and not a treaty. There is accordingly no requirement of ratification.

A principle of modified unanimity may be adopted. This occurs if unanimity only among certain States is required, or if the parties to a dispute are not entitled to vote in the settlement of a dispute, or if no account is taken of absentees and abstentions, or if the decisions only apply to those States which have accepted them. A State can declare that it has no interest in a particular decision; its abstention does not then prevent the decision from being taken, but the decision does not apply to it. This system, however, endangers the unity of the organization to some extent.

The general rule in classical organizations is to require a qualified majority in the case of non-binding decisions; this also applies to the council in supranational organizations. This requirement facilitates the taking of decisions, though it may give a minority the power to block them. It is found in the following forms: (a) where the majority must include certain named States; (b) where the majority must include one or more States from one or more specified categories; (c) where the member States do not all have an equal number of votes; either the majority of votes alone is considered or it is combined with a prescribed majority of States; (d) where the majority must reach a particular figure, generally two-thirds. For all less important questions, particularly on procedural matters, only a simple majority is required.

Lastly, the majority vote principle is used in all non-diplomatic and supranational organs, since in these cases the need to respect State sovereignty does not apply.

C. Revision of the Constituent Treaty

The constituent treaties generally contain special provisions for their revision (→ Treaties, Revision) which relax the normal procedures for the conclusion of treaties. This enables revision to be carried out more easily than through the normal law-making procedures of the organization, and is again a peculiarity of international organizations compared with States. Only in the case of supranational organizations is the procedure made more difficult as a result of their complicated structure.

1. Classical International Organizations

In the case of the classical international organizations, the process of revision may be initiated by any member State, or, when the treaty so provides, by an organ. The treaty can, however, provide that revision, or an examination of the question of revision, shall be undertaken at a particular time. Thus periodic revisions are undertaken in the case of the international administrative unions. As a matter of form, the parties usually adopt a new treaty each time, rather than amend the existing treaty.

The new text is drafted either by an organ or by a special revision conference of the member States. A qualified majority is required for acceptance.

Since we are dealing here with a treaty, ratification or acceptance by all the States concerned would be necessary in principle. Various systems are used in practice, however:

Unanimity: Ratification by all member States is necessary. This rule applies if the constituent treaty contains no provisions concerning revision.

Qualified majority: The new text enters into force on ratification by a prescribed number of States, but only as between the ratifying States. In other respects, the old text continues in force. The disadvantage of this procedure is that two texts are in force at the same time. It can be avoided by providing for the exclusion of

the minority from the organization.

Qualified majority binding on all: This procedure, under which the new text enters into force for all member States upon acceptance by the prescribed majority, contains an element of supranationality. It has the advantages of being simpler and of resulting in a uniform text, but does carry the risk of imposing the majority decision upon the minority. This danger can be avoided to some extent by granting – expressly or impliedly – the right to withdraw from the organization in such cases.

A combined system: Frequently two systems form a combined system in which a more onerous procedure is laid down for more important changes, particularly if they involve the assumption of new duties by the member States. In the case of certain organizations (the Council of Europe, the → United Nations Educational, Scientific and Cultural Organization), minor changes can be made by a decision of the plenary organ.

2. *Supranational Organizations*

In the case of the supranational organizations, a decision of the council is required to initiate the procedure for revision of the treaty, and the supranational authority must be consulted (if it was not the authority which took the initiative) and also the assembly (with the exception of the ECSC). The texts are drafted at a special conference of the member States, and amendments must be adopted unanimously. The new text only enters into force upon ratification by all member States.

A simplified procedure is used for enlarging the powers of the organization, where this is necessary in order to realize one of the purposes of the organization, and also, in the case of Euratom, for changes in the provisions governing security control and ownership of nuclear fuels.

D. Judicial Decisions

1. *Classical International Organizations*

In the case of the classical international organizations, relatively little use is made of judicial organs regarding the organizations' or States' activities, and as a general rule resort to them is optional (→ International Organizations, Legal Remedies against Acts of Organs). The settlement of disputes is primarily a matter for the political organs.

For the UN and its Specialized Agencies particular importance attaches to the use of advisory opinions of the ICJ (→ Advisory Opinions of International Courts), since the Statute of the Court does not permit international organizations to appear before it as parties to a dispute. While the UN can ask for an advisory opinion on any question of law, the Specialized Agencies can only do so on questions arising within the scope of their activities. They must additionally obtain the authorization of the UN.

A number of organizations have provision for compulsory judicial settlement of disputes between member States concerning the interpretation or application of the constituent treaty. In the majority of cases jurisdiction is conferred upon the ICJ, otherwise upon a special arbitral tribunal. For disputes between the organization and member States, compulsory jurisdiction can only arise from special agreements between them and only for disputes concerning the interpretation or application of such agreements (headquarters agreements; → International Organizations, Headquarters). The Convention on the Privileges and Immunities of the United Nations of February 13, 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947, provide for advisory opinions of the ICJ to be obtained on questions in these areas, and declare that they will be binding. In this way the compulsory jurisdiction of the Court is established indirectly, though of course the procedure can only be set in motion by the organization. Some organizations have special administrative tribunals for disputes involving the conditions of service of their employees (→ Administrative Tribunals, Boards and Commissions in International Organizations). The → United Nations Administrative Tribunal and the → International Labour Organisation Administrative Tribunal can also be used by certain other organizations. The awards of these two tribunals are to a limited extent subject to review by the ICJ, but are not subject to review by the political organs.

2. *Supranational Organizations*

By contrast, compulsory judicial settlement of disputes is taken substantially further in the supranational organizations. Judicial control coun-

terbalances the extensive powers of the organs and also acts as a substitute for the otherwise slight political control which exists. It has been developed to the greatest extent in relation to the supranational organ.

The organizations of the European Community have a special, permanent court, the Court of Justice of the European Communities, which functions as a constitutional and administrative court and whose decisions are final. Its jurisdiction is in general limited to questions of law, and the Court cannot examine the utility or necessity of a decision which is challenged before it; however, there are exceptional cases where the Court is free to consider all aspects of the matter.

The Court applies principally the law of the communities, that is to say the treaties and the rules made under them. Since this is a part of international law, the principles of interpretation in international law apply, at least in the case of disputes between States and between States and the organization. In addition, the Court has to apply general international law and → general principles of law (→ Sources of International Law).

The main innovation which the supranational organizations have established is the extensive compulsory jurisdiction of the Court in disputes between a member State and the organization or an organ, between individuals and the organization or organ, and between different organs. In this last case it is not only disputes as to jurisdiction which are covered, but also questions involving the application of substantive law or procedural requirements. The most important types of proceedings are those for annulment of an act and those in respect of an organ's failure to act, as well as those for a preliminary ruling (to obtain the opinion of the CJEC on questions of community law referred to it by national courts in the course of national proceedings).

VI. THE ORGANIZATION'S EXTERNAL RELATIONS

A. Relations with Non-Member States

1. Conflicts Between the Constituent Treaty and a Treaty with a Third State

Where obligations arising from the constituent treaty conflict with obligations arising from treaties with a third State (→ Treaties, Conflicts between), the problem can be resolved in various ways, such as:

(a) By giving priority to the constituent treaty: Obligations which conflict with the constituent treaty are then *ipso jure* annulled or suspended. This can, however, only apply as between the member States; third States are not bound to accept the non-performance of obligations owed to them. Similarly, it is frequently provided that member States shall not undertake any new obligations which are inconsistent with the constituent treaty. Nevertheless, a treaty entered into with a third State remains valid, though the third State may in some circumstances be met with a plea of bad faith or lack of competence on the part of the member State. To prevent such conflicts from arising, supranational organizations have a right of control over the conclusion of treaties by member States with third States.

(b) By reservation: Past treaties, and in some circumstances also certain future treaties, can be given priority by the constituent treaty (→ Treaties, Reservations).

(c) By a duty of adjustment: Where there is a duty to rescind earlier conflicting treaties or to adjust them to the new legal situation, provision is often made for mutual support among the member States, since this procedure necessitates negotiations with the third States concerned.

2. Effect of Constituent Treaty on Third States

In the constituent treaties of several organizations and especially in the UN Charter, there are provisions purporting to affect third States. Such provisions are not binding on the third States, however. In practice they may be characterized as recommendations, not legally binding on the third State but possessing a certain degree of political importance.

3. Power to Conclude Agreements with Third States

In general, organizations have the power to conclude agreements with third States. In many cases this power is implied (→ International Organizations, Treaty-Making Power; → International Organizations, Implied Powers).

These agreements are treaties and must be

interpreted and applied in accordance with the principles of international law. They create obligations only for the organization, and not for the member States as well, in so far as it is not otherwise expressly agreed or implicit from the constituent treaty. Certain States can have close ties with the organization through treaties known as association agreements; these agreements provide for close cooperation, which can extend to collaboration within certain organs and lead to a kind of second-class membership.

In classical international organizations the treaty-making power lies with the organ which is designated in the constituent treaty, or within whose jurisdiction the subject-matter falls, or, in case of doubt, with the principal organ. Negotiations are conducted by a non-plenary organ or by a special delegation. The details of the procedure vary from case to case.

In the case of the supranational organizations the treaty-making power lies either with the council or with the supranational organ. The latter is responsible for carrying on the negotiations (e.g. → European Communities: External Relations).

4. Diplomatic Relations

Third States can maintain diplomatic relations with international organizations. This is done through special diplomatic missions, such as the permanent observers maintained by Switzerland at the UN.

B. Relations with Other International Organizations

As a result of the large number of organizations in existence, there is a risk that their jurisdictions will overlap and duplicate each other. Cooperation, coordination and rationalization of the institutions appear therefore to be necessary. The problem is particularly acute for the European organizations, of which there are several having in part the same objectives and the same powers. There are further organizations which have been planned but not yet established. This large number is explained by the many different views held by States on the structure and extent of integration.

One particular issue that has been raised is the relationship between universal organizations and regional organizations. This applies particularly to the UN. The UN encourages the setting up of regional organizations to realize the ideals of the UN Charter, but subjects them to certain conditions. Obvious possibilities of conflict are removed by agreement (→ Regional Arrangements and the UN Charter).

A further possibility is to reserve competence over activities carried out by other organizations, as the Statute of the Council of Europe provides.

In the case of supranational organizations, the problem of membership in other organizations arises. Logically, the supranational organization should become a member in place of the individual States within the limits of its jurisdiction. Although this step has not yet been taken, these organizations provide for a duty of consultation and common action by their member States in other organizations.

Collaboration on an equal footing can come about either purely *de facto* or on the basis of treaty arrangements. The same rules apply to the conclusion and status of such agreements as for other treaties with States. There is additionally the procedure of agreement by means of identical decisions within the competent organs.

The content of arrangements between organizations can vary greatly, and ranges from sharing information, providing reports, and exchanging documents to the right to make recommendations to the other organization with or without a duty on its part to examine or comply with them. Provision is frequently made for direct contacts between the organs of the organizations. Closer collaboration can further be promoted by joint meetings of the organs. Special organs can be established to arrange liaisons with other organizations (liaison commissions). Collaboration is also made easier where different organizations are based near to one another.

A special connection exists between the UN and other universal organizations which have been established by treaty as UN Specialized Agencies. The UN is responsible for coordinating the programmes and activities of the Specialized Agencies, and this is done by means of recommendations of the → United Nations General Assembly or of the → United Nations Economic and Social Council. The Specialized Agencies are obliged to make a report on the implementation of these recommendations. Moreover, there is a duty to support the UN Security Council in its measures to maintain

peace and security. Detailed provisions exist in the Agencies' constituent treaties.

Close collaboration is also achieved on the basis of agreements between the various European organizations.

Closer coordination may take the following forms:

- Common membership: Common membership in the organs of different organizations can be provided by treaty or come about purely *de facto*.
- Common organs: In this case a single organ acts for two or more different organizations.
- Incorporation of one organization into another: The purpose of such a move is to allow control by a superior organization (as for example occurred in the relationship between the Organisation for European Economic Co-operation and the European Payments Union). Efforts of this kind were made principally by the Council of Europe in the 1950s with regard to the other European organizations.
- Fusion of formerly different organizations.

VII. GUARANTEES

A. Protection of the Organs

Since international organizations must operate and have their seats within the territory of a State, they need to be protected against unlawful measures and attempts to influence them on the part of the host State. This is achieved by the granting of diplomatic privileges and immunities.

Protection is afforded to the organization itself, to the delegates of the member States and to the staff of the organization. It is, however, a lesser protection than that for diplomats since it only extends to activities done in the service of the organization. Exemption from taxation is in general granted only in respect of the salaries paid by the organization.

The members of supranational authorities and of judicial organs enjoy the special protection of a fixed term of office and provisions restricting their removal from office.

The equipment and property of the organization are protected from interference by the principle of inviolability of the organization's premises, in particular of its archives, and by its exemption from taxation and customs duties. Further protection is afforded by the organization's freedom to import and export goods and to make and receive payments, and by its right of unimpeded correspondence.

The constituent treaty generally deals with these matters in principle only. The implementation is achieved by special protocols or agreements. Mention should be made of the two Conventions on the Privileges and Immunities of the United Nations of February 13, 1946 and on the Privileges and Immunities of the Specialized Agencies of November 21, 1947, the numerous headquarters agreements and the → Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, of March 4, 1973 (not yet in force).

B. Financing

The general rule is that the financial needs of the organization must be met by member States' contributions. The organization is thus financially dependent upon the member States. The costs are shared among the member States in accordance with a set formula which may be laid down in the constituent treaty or determined from time to time by the relevant organ. For the most part, contributions are calculated by reference to national income, frequently with an upper limit, so that no State has to bear an excessive burden or can exercise too much influence on the organization. Contributions can also be calculated by reference to the number of votes held by each State. Certain organizations also finance themselves through loans, the charging of fees and capital subscription. The European supranational organizations have broken new ground by introducing Community export and import duties and a share of national value-added-tax revenues as sources of income.

Different arrangements are frequently made for financing different categories of expenditure. There may be different formulae for the calculation of the contributions or different methods of raising the money. A distinction is usually made between the costs of administration and expenditure on the objects of the organization. Organizations often rely on voluntary contributions for the latter.

The constituent treaties also make provision for the budget, audits, freedom of transfer of funds and the unit of account to be employed.

C. Sanctions

Sanctions against illegal conduct by member States are generally only of a rudimentary nature and have little practical effect. They are either based upon a decision by an organ or are imposed automatically. The supranational organizations also provide for sanctions against private persons.

The following measures of enforcement could conceivably be applied: (1) Suspension of rights of membership, which usually takes the form of exclusion from voting. (2) Exclusion from the organization; since a sanction of this sort frequently runs counter to the purpose of the organization, its value is questionable. (3) Empowering an injured State to take counter-measures; this is an example of → reprisals, taken not by the organization, however, but by the State which has suffered a wrong through the illegal conduct of another member State and is then released from certain obligations towards the offender under the constituent treaty. (4) Fines, financial penalties; these are primarily directed against private persons and are used in supranational organizations. (5) Measures of compulsion which can be of a political, economic or even of a military character. (6) Cessation of payments by the organization and recovery of amounts already paid. (7) Publication of the breach of the constituent treaty by a particular State. (8) Sanctions to be taken at the discretion of the competent organ with the organ, of course, being bound to keep within the constituent treaty and the limits of its powers; it is uncertain, however, what sort of measures are permissible here. (9) Decreeing illegal acts to be null (→ Nullity in International Law). (10) → Sequestration which is directed against private persons and is used in the supranational organizations.

VIII. CONCLUDING OBSERVATIONS

An international organization can only produce politically fruitful work if the member States possess the will to cooperate and a certain feeling of solidarity. The organization should certainly not serve solely and exclusively as an instrument of national foreign policy to advance national interests; a minimum of recognition of the common interest is needed.

A further condition is a certain homogeneity of internal structure and fundamental convictions among the member States. If this is absent, the organization cannot progress beyond a minimum of occasional cooperation and will exhaust itself in formal activity, not reaching matters of substance. The more closely-integrated the organization is, and the wider its powers, the more essential the homogeneity of the member States has proved to be and the more clearly the inner dynamic of the organization can be seen – the hidden tendencies towards either break-up or further centralization.

In spite of the excessively large number of international organizations, the community of States has maintained its character. It continues to be composed of sovereign States and to rest on the principle of → self-help. The international legal system is decentralized to a large extent; the identities of law-makers and subjects coincide. In foreign policy and in → international relations, the relative power of individual States is still the decisive factor (→ Power Politics: → Foreign Policy, Influence of Legal Considerations upon).

International organizations have done little to change this state of anarchy. They perform limited functions, and their effectiveness has proved to be slight, at least in so far as the fundamental political problems are concerned. Their activities can be regarded as "power politics in disguise" (Schwarzenberger). International organizations seem largely to be nothing other than instruments of and arenas for the pursuit of national foreign policies. This applies also to the regional organizations, though rather less so in Europe, where the European Communities in particular are of great importance. The non-political technical organizations have also proved to be effective.

International organizations deserve certainly to be supported and promoted, but care must be taken to guard against the dangers of insincerity and illusion, of confusing appearance and reality, which are particularly great here. There is also a tendency to extend the already excessive growth of organizations even further, which very often leads to duplication, rivalries and inefficiency.

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INTERNATIONAL ORGANIZATIONS, HEADQUARTERS

1. Notion

One of the constituent elements of an international organization is the existence of a secretariat (→ International Secretariat). The place in which the secretariat is located is usually called the "seat" of an organization, the secretariat together with its premises, archives, and property being the "headquarters". Since to date there are no international organizations which have territorial → sovereignty, the organizations must establish their headquarters in

the territory of a → State (host State) which is normally, but not necessarily, a member State.

The whole complex of establishing headquarters touches upon two different spheres. The questions of where and how to found a headquarters are of a purely organizational nature, whereas the question of how to structure relations with the host State belongs to the broader issue of the external relations of international organizations.

2. Establishment: Organizational Aspects

In deciding upon the location of headquarters a choice has to be made first of all as to whether a major or a small State should be preferred as a host State. An argument in favour of the former is the possibility that, as host, a receiving major State will display greater interest in the activities of the organization, and this may serve to endorse the effectiveness of the organization. However, this advantage may be counterbalanced by the danger that the influence of a major host State may become detrimental to the independence of an organization. (For the pros and cons concerning the establishment of the headquarters of the → United Nations on the territory of a major power, see Yearbook of the United Nations 1946–1947, p. 41.)

The statutes of various international organizations solve this problem in different ways. They may attach the headquarters to a specific town (e.g. the → Universal Postal Union in Berne), or leave the decision to the organs of the organization (e.g. the → Food and Agriculture Organization of the United Nations), or lay down special criteria to be met by the potential host State, as do the constitutions of the → International Bank for Reconstruction and Development and the → International Monetary Fund, which provide that the principal offices are to be located in the territory of the member having the largest financial interest. In addition, further circumstances will be taken into account in choosing the seat of an international organization, such as the willingness of the host State to grant all necessary privileges and immunities (→ International Organizations, Privileges and Immunities), the existence of sufficient buildings, the access to a world-wide network of communications, and so forth.

The choice of a seat will be further influenced by the decision regarding centralization of the international organization. When the UN was established, a concentration of the headquarters of the → United Nations Specialized Agencies was considered desirable. The failure to achieve it was due partly to the delay in choosing New York as the seat of the UN. The problems which may result from decentralization are demonstrated by the → European Communities. The division of seats of organs between Brussels, Luxembourg and Strasbourg has turned out to be a handicap for the Communities. Relations between the European Parliament and the Commission would be closer if both worked in the same city.

Some international organizations, like the → World Health Organization and the FAO have regional offices besides their headquarters, due to the fact that some activities can operate more effectively on a regional level than from one central office. Technically, such regional offices are branches of the organization's secretariat but have some autonomous functions.

3. Establishment: External Aspects

The establishment of the seat of an international organization in the territory of a host State creates a bilateral relationship between two separate → subjects of international law which results in mutual obligations and a duty of → good faith. The cooperation of the host State is so essential for the effectiveness of an international organization that the establishment of the headquarters in the territory of a State which is not prepared to serve as a host is most unlikely. The question raised by Kelsen (p. 98), of whether or not States are obliged to offer hospitality to international organizations of which they are members, is thus of a more theoretical nature. The special relationship existing between an international organization and its host State may even result in restricting the (as a general principle undisputed) right of an international organization to change freely the location of the seat of its headquarters or of a regional office (see the → International Court of Justice's → Interpretation of Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion) of December 20, 1980).

Separate from the existence of a special relationship between an international organization and its host State, their specific mutual rights and obligations are spelled out by agreement. In grouping all those agreements relating to the seats of international organizations, three categories may be identified. First the "headquarters agreements" should be mentioned. These have been concluded between the UN and the Specialized Agencies as well as other international organizations on the one hand, and the States in whose territory they maintain headquarters or regional offices on the other.

There are, secondly, the General Conventions on the Privileges and Immunities of the UN and the Specialized Agencies, of February 1946 and 1947 respectively (UNTS, Vol. 1, p. 15; Vol. 33, p. 261). The purpose and the content of those two instruments is alike in that they both define the legal status, privileges and immunities of the organization, its officials, representatives attending the meetings of its organs and conferences, and other persons engaged in its activities (cf. → Diplomatic Agents and Missions, Privileges and Immunities; see also → Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character). They contain provisions which recognize the legal capacity of the organization, accord it and its property and assets immunity from every form of legal action, and declare the premises of the organization to be inviolable.

The headquarters agreements are more specific with respect to the regulation of the working conditions of the international organization in question and its protection. The headquarters agreement concluded between the UN and the United States in 1947, for example, contains provisions on communication and transit, police protection of the headquarters and public services for it. Most important are those rules regulating the application of national law in the headquarters district.

The third category of instruments bearing on the relationship between an international organization and its host State are the so-called "special agreements". They include agreements complementary or supplementary to one of the General Conventions, agreements applying the provisions of the General Convention in cases where members have not yet acceded to it, and agreements specifying the nature of privileges and immunities to be enjoyed by certain UN bodies in host countries.

While all those agreements serve the same objective – regulation of the legal status of the organization and its privileges, immunities and facilities within the territory of the host State – there does not exist a uniform law on international organizations' headquarters. This is due to the fact that local differences have to be taken into account in the various headquarters agreements.

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INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS ACTIVITIES *see* Human Rights, Activities of Universal Organizations; Human Rights Covenants; Human Rights, Universal Declaration (1948)

INTERNATIONAL ORGANIZATIONS, INTERNAL LAW AND RULES

1. Notion

International organizations are normally created by formal → treaties between States or other → subjects of international law. Such a treaty can be considered as the "constitution" of the

organization. It contains provisions not only on the rights and duties of the member States and the aims and powers of the organization concerned, but also on the organs to be created, their functioning and their competences. It also often provides for the enacting of rules by the different organs; if there is no express provision in this regard in the treaty, the organs can nevertheless be considered to have implicit rights to adopt rules for their effective functioning (→ International Organizations, Implied Powers). This competence is more or less independent of the organization's power to adopt resolutions and decisions regarding the behaviour of member States in general (→ International Organizations, Resolutions; cf. also → International Legislation).

The norms for the internal order of the organization contained in the basic treaty as well as the "secondary" rules enacted by the organization constitute the internal law of the organization. A distinction can and should be drawn between rules which are intended to be binding as law and rules which are only non-binding political and administrative guide-lines. Whether the rules are legally binding or not depends upon the powers of the organ and its intentions in a given case. Non-binding rules can be compared *mutatis mutandis* with rules of → comity or *courtoisie* in inter-State relations.

This article does not include consideration of the rules enacted by the → European Communities as prototypes of "integrated" communities with extensive legislative powers affecting the internal legal order in the member States. Here only the internal law of universal and regional inter-State organizations of the traditional type are treated.

2. *Types of Internal Rules*

The internal law of an organization can be classified or sub-divided according either to its formal source or its substantive content.

(*a*) *Differentiation by form*

The basic treaty (or treaties) of an organization is binding for the member States as well as for all the organs and functionaries. In so far as these rules regulate the internal order of the organization, they constitute the highest level of internal law.

Under the constituent treaty the main organs have power to enact rules for their own procedures and for their officials. Whether the main organs share equal rank or whether a hierarchy exists between them depends upon the relevant constitutional provisions.

Subordinate organs, whether provided for in the constituent treaty or created by an autonomous act of the higher organ, can normally also enact rules within their competences. These rules are subordinate to the rules of the higher organ.

A formal distinction can also be drawn between general rules for a variety or a considerable number of future situations and decisions in individual cases. Whether individual decisions (such as orders for an individual official of the organization or decisions of an international administrative tribunal) are to be considered as law depends upon theoretical considerations. If one accepts as law only rules of general application, individual decisions, although binding, are not "law". However, this article encompasses under the notion of internal law not only rules of general application but also binding decisions in individual cases.

(*b*) *Differentiation by content*

The possible content of internal rules cannot be described in an abstract and general fashion. The purposes and principles of a given organization, its powers and organizational structure, the status and number of its officials and functionaries, and other factors are decisive for the extent and the content of the internal law of each organization. Nevertheless, some general patterns can be discerned.

Nearly every organ needs formal rules of procedure in order to act efficiently. Whether or not the constituent treaty contains an express provision in this respect (such as Art. 21, sentence 1 of the → United Nations Charter: "The General Assembly shall adopt its own rules of procedure."), each organ is empowered to create such rules. A major part of the internal law of an organization consists of rules for the procedures inside the organization.

Another important set of rules comprises budgeting provisions and the financial framework of an organization in general, including the sources of its funding. In most organizations the expenses are to be borne by the member States, and it is up to the main organ to assess the individual con-

tributions to the budget (→ International Organizations, Financing and Budgeting).

The international public service consists of several thousand functionaries (→ Civil Service, International). To define their rights and duties, a great number of rules have been laid down in statutes enacted by organs of the different organizations. In many organizations a hierarchy of norms can be found. Thus while a general statute enacted by the plenary organ contains the main principles governing the public service, the Secretary-General or Director-General lays down further provisions. In addition, international administrative tribunals or boards have often been created, and statutes for their composition and powers have been enacted. According to these different rules, the tribunals or boards are competent to decide individual claims and cases by applying the relevant rules, including → general principles of law (→ Administrative Tribunals, Boards and Commissions in International Organizations).

Military forces of international organizations require rules for their activities, governing discipline and so forth. Also in this respect a great variety of internal law has been formed especially in connection with → United Nations Forces.

These examples demonstrate the importance of the internal law of international organizations and its main sectors.

3. *Is Internal Law International Law?*

Neither Art. 38 of the Statute of the → International Court of Justice nor any other treaty says anything about the position of internal law among the → sources of international law. Is internal law really law, and is it → international law? In this respect, the authorities are divided.

A minority view, formulated by Balladore Pallieri, denies that internal law of international organizations is really law. According to this opinion, the internal rules, whether they are binding or not under the constitution of the organization, are not law in any legal sense. The final characterization of internal rules remains unclear.

Another opinion, expressed by Herbert Miehsler among others, characterizes internal law as law, but not as *international* law. Under this view, internal law forms a new and separate legal order alongside international law in the proper sense, a legal order *sui generis*. This theory can be supported by general considerations on the proper realm of international law as inter-State law, but it is at least open to doubt.

The prevailing opinion that the internal law of international organizations is a new branch of and forms part of international law has strong arguments in its favour. The basis of the internal law is the constituent treaty of each organization; the enactment and binding force of the internal law derive from this treaty as interpreted in conformity with the practice of the organization concerned. The member States acting through and in the organs of the organization are also the final source of this branch of law, which should be considered as forming part of present-day international law.

4. *Validity and Nullity*

There can hardly be any doubt that all organs and the internal law enacted by them are bound by and subordinated to the constituent treaty, the "constitution" of the organization. Whenever an organ oversteps its powers and competences, its acts are defective. Whether the defectiveness makes the act void or voidable, or whether even a defective act remains valid and binding, is an open question. A definite answer can only be given when one organ or an international court or tribunal is empowered to decide the matter finally and with binding force. Since in most organizations no such final arbiter exists, and since no clear rules in this respect have yet developed, only tentative solutions can be indicated.

If an organ, in enacting internal law, obviously acts *ultra vires*, strong arguments militate for the nullity of such an act, with the consequence that neither the member States nor other organs of the same rank are bound thereby (→ Nullity in International Law). But it remains to be determined which acts are obviously *ultra vires*. It is also open to doubt whether member States or an organization also in other cases are able legally to denounce an act as *ultra vires* and thereby deny its binding force. No clear resolution of this problem is possible.

If several organs of an organization have equal rank, each organ interprets the constituent treaty autonomously, without binding force for the other organ. Thus, it may happen that the organs hold

different views on the validity of acts taken by one organ. In this connection, it should be mentioned that the ICJ, in the → Certain Expenses of the United Nations Advisory Opinion (see ICJ Reports 1962, at p. 168) expressed the view that an act of the → United Nations General Assembly might be valid even if the Assembly had exceeded its competences (but not those of the Organization itself).

On the other hand, an existing hierarchy between several organs invalidates the acts of a subordinate organ which are not in accordance with rules enacted by the higher organs. If, for example, the Secretary-General of an organization lays down rules for the civil servants which are not compatible with the rules incorporated in a statute enacted by the General Assembly, the latter rules prevail.

5. Evaluation

The steadily increasing body of the internal law of international organizations forms a part of present-day international law. The international community has empowered the organizations to create and formulate this new part of the law, and its importance and binding force have been accepted by the actors in the international order. To the extent that the constituent treaty of an organization and its continuous practice do not contain clear answers, many legal questions remain to be resolved. Decisions of international courts and tribunals and the evolving of more customary rules should contribute to the resolution of those problems. (See also → International Law in Municipal Law: Law and Decisions of International Organizations and Courts.)

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INTERNATIONAL ORGANIZATIONS, LEGAL PERSONALITY *see* International Organizations, General Aspects; Subjects of International Law

INTERNATIONAL ORGANIZATIONS, LEGAL REMEDIES AGAINST ACTS OF ORGANS

1. Universal Organizations

To some extent international organizations can take decisions binding upon individuals. In most international organizations, this possibility exists only in respect of the members of their own staff (→ Civil Service, International). The → European Communities offer the best examples of organizations which can make rules binding on a far larger group of persons (→ Individuals in International Law).

Whenever binding decisions are taken, the question of judicial control should be raised. Political authorities may make mistakes; the need for political compromise may result in unfair treatment of individuals.

Acts of → non-governmental organizations can be challenged before the courts of the State where the acts are to be executed or, in some cases, before the courts of the host State or the State in which the organization has been registered.

Governmental organizations may take actions which are so much of a private law nature that the

organization does not object to those acts being subjected to the legal control of a national court. For its operations under private law, it is possible, therefore, to serve process on a public international organization before a national court. As governmental authorities, however, international governmental organizations can always invoke their immunity to national jurisdiction (→ International Organizations, Privileges and Immunities). By doing so, they indicate that they consider their act as an official one which automatically brings them outside the competence of national courts and within the competence of the judicial organs of the organization itself, if such organs exist. If not, only political settlement or settlement by means of → arbitration is available.

The → International Court of Justice may issue an → advisory opinion on the question whether any act of the → United Nations or of a → United Nations Specialized Agency has been lawfully taken. Such advisory opinions can be requested only by organs of the UN and of the Specialized Agencies. However, the legality of acts of the → Universal Postal Union cannot be brought before the ICJ, as this organization uses special arbitration proceedings. Only rarely have advisory opinions been requested on the legality of acts of the UN or of its Specialized Agencies. For individuals affected by such acts the procedure is of no help, as they cannot initiate any action themselves.

Normally, individuals will not be directly affected by acts of the UN or its Specialized Agencies. In the case of → United Nations forces, where effect on individual citizens is more likely, special arrangements have been made. In the case of the UN operations in the Congo the UN paid lump sums to the States whose nationals were affected by the activities of the Organization. The most important sum was paid to the Belgian Government ($1.5 million) which distributed it to the individuals involved.

Staff members of the UN and its Specialized Agencies wanting to challenge acts of the organizations affecting them may bring an action before either the → United Nations Administrative Tribunal or the → International Labour Organisation Administrative Tribunal. The latter organ may also be charged with the settlement of conflicts arising from contracts concluded by the → International Labour Organisation. (See also the → World Bank Administrative Tribunal.)

2. *Regional Organizations*

Some regional organizations provide for more extensive legal remedies against their acts than do universal organizations.

(*a*) *The European Communities*

The European Communities have the most detailed rules. Before the → Court of Justice of the European Communities, the member States, the Commission and the Council may challenge any act of the Council and the Commission which infringes the constitutions of the Communities (the → European Economic Community, → European Coal and Steel Community, → European Atomic Energy Community) or any rule of law relating thereto. The action must be brought within two months of the alleged infringement. Individuals may challenge Community acts which directly and individually concern them.

As most rules of Community law have to be applied by the national courts of the member States, these courts may refuse to apply rules which are illegal (→ European Communities: Community Law and Municipal Law). They may do so only after having obtained a preliminary ruling of the Court of Justice of the Communities.

The Court of Justice of the European Communities also serves as the tribunal of the Communities for disputes involving their staff as long as a special tribunal has not been created (→ Civil Service, European).

(*b*) *Other European provisions*

Both within the → Organisation for Economic Co-operation and Development's Nuclear Energy Agency and within the → Western European Union, provisions have been made for remedies against acts causing injury to individuals. Both organizations have set up tribunals but in neither one has the tribunal yet been used in practice.

(*c*) *Tribunals for staff disputes*

Many regional organizations have also set up administrative tribunals before which the staff of the organization may bring cases concerning their

positions. The most important of such tribunals are the Appeals Board of the Organisation for Economic Co-operation and Development and the Appeals Commission of the → North Atlantic Treaty Organization.

3. Applicable Law

International organizations are not subject to any national legal system. The international legal system is rather rudimentary and contains few provisions on the legality of acts. Apart from the constitution of the organization there may be rules of procedure for the organs and a statute for the personnel (→ International Organizations, Internal Law and Rules). However, legal remedies will never be refused on the ground that there is no law. Up until now all courts involved have ruled that they may not refrain from giving a judgment on the ground that the law is silent.

When there are no express provisions, the courts will derive an increasing amount of law from the general rules of law codified by the international community, such as → treaties and covenants against racial discrimination and for the protection of → human rights (→ Human Rights Covenants). It is almost unthinkable that an international tribunal would take a decision contrary to any such document. In the absence of international provisions, the courts will turn to the general principles common to the legal systems of the member States (→ General Principles of Law). Most administrative law systems contain basically the same notions on equity, non-retroactivity, abuse of power, the right to be heard, *ne bis in idem*, etc., from which courts may derive principles to be applied in the laws of international organizations (see also → Nullity in International Law).

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INTERNATIONAL ORGANIZATIONS, MEMBERSHIP

A. Acquiring Membership

With very few exceptions, international organizations are established by multilateral treaties containing the constitutions of the organizations (→ Treaties, Multilateral). The States which conclude such treaties are the original members of the organizations. Although some international organizations, such as the → Benelux Economic Union, do not provide for further membership, additional members can usually be admitted once an international organization is in operation.

Most constitutions of international organizations contain special conditions for the admission of new members. The most common condition is that the prospective member must be a → State. Other conditions may be that the State must be within a particular region (a condition for all regional organizations; see → Regional Arrangements and the UN Charter, and the → Regional Cooperation and Organization articles) or that it produce a specific commodity (such as oil in the case of the → Organization of Petroleum Exporting Countries). Often, organizations also require that the prospective members be able and willing to fulfil specific tasks of the organizations (e.g. in the → United Nations, prospective members must be able and willing to carry out the obligations contained in the → United Nations Charter).

The requirement of statehood may cause problems for communities of States, such as the → European Communities, which may wish to become a member of some international organizations, such as the Commodity Councils (→ Commodities, International Regulation of Production and Trade). The same requirement may also cause problems for States which have not been generally recognized (→ Recognition). Location in a particular region may cause problems for States belonging to several regions at the same time; while the condition concerning a State's ability to carry out obligations raise problems in particular for → micro-States. Such problems must be solved by the organ of the organization charged with the admission of new

members (usually the assembly or general conference).

Some → United Nations Specialized Agencies admit members of the UN upon a simple → declaration by the prospective member; usually, however, membership is granted by a resolution of the organization. In the universal organizations and in many regional ones, such a resolution can usually be taken by majority vote, but unanimity of the existing members is sometimes required. Membership of international organizations cannot be obtained by → State succession. Newly-independent States have to be admitted to international organizations even if the States from which they have been separated were members of the organization.

B. Members

Most international organizations admit only independent States as members. But there are some exceptions to this rule:

(1) All organizations of the UN system are open to membership of the Byelorussian and Ukrainian Soviet Socialist Republics, although these States are no more independent than the other Soviet republics. Their membership results from a political compromise at the end of World War II. In order to give some more weight to the Soviet Union in the UN, it was decided then that these two Soviet republics, which had suffered to such an extreme extent during the war, would be accepted as separate members (→ Soviet Republics in International Law).

(2) Some technical international organizations are concentrated more on services provided than on statehood. They may therefore admit as members non-autonomous territories which perform particular services. The → World Meteorological Organization, for example, admits any territory which maintains its own meteorological service.

(3) Some international organizations are not composed of States, but of specific departments of → governments. The → Bank for International Settlements in Basle, for example, is composed of central banks, not of States. → Interpol is composed of police authorities. Such organizations are on the dividing line between governmental and → non-governmental organizations. As it is based on a treaty between States, the Bank for International Settlements is considered governmental, while Interpol, not founded by a treaty, is not.

(4) The International Coffee Organization, set up in 1976, opens membership to groups of coffee-importing States. This possibility of accepting membership collectively may be interesting for small States which do not have a sufficient interest in the organization's activities to participate fully themselves.

C. Special Types of Membership

1. Associate Membership

Some international organizations admit associate members, whose rights and obligations are less than those of full members.

In the organizations of the UN system, associate members normally may not vote and may not hold office in the principal organs. They pay lower contributions to the organization (→ International Organizations. Financing and Budgeting). Originally, associate membership was meant for non-autonomous territories (→ Non-Self-Governing Territories). Nowadays, national → liberation movements also sometimes hold substantially the same position, though they are not officially called associate members. Associate membership is also possible in some UN organs where non-autonomous territories may participate without voting. In the Economic Commission for Africa (→ United Nations, Economic Commissions), some non-African States, as well as → Namibia, are associated members.

In Europe, associate membership is possible in the → Council of Europe. There, associate membership entails full participation in one of the two principal organs (the Parliamentary Assembly; → Parliamentary Assemblies, International), but no participation in the other (the Committee of Ministers). At one time, the → Saar Territory had associate membership. The → European Economic Community has concluded association agreements which do not grant any rights to participate in the Community itself, but rather create new separate institutions comprised by the Community and its member States on the one hand and the associate State or States on the other (→ European Economic Community, Association Agreements).

2. Partial Membership

Some States participate in one or more organs of an international organization without being members of the organization itself. Some States, for example, are not members of the UN but are members of its regional economic commissions, or are full parties to the Statute of the → International Court of Justice. Or, they may participate in other UN organs, such as the → United Nations Children's Fund and the → United Nations Conference on Trade and Development. The same is partially true also for liberation movements. For example, the → Palestine Liberation Organization has been admitted as a member of the UN Economic Commission for Western Asia. Yugoslavia participates with full rights and obligations in several Standing Commissions of the → Council for Mutual Economic Assistance (Comecon), of which she is not a member.

3. Affiliated Membership

An example of this class of membership exists in the World Tourism Organization (→ Tourism), in which international governmental and non-governmental bodies may become affiliated members. They may participate in the activities of this Organization and belong to a special Committee of Affiliated Members. This Committee is represented by three observers in the General Assembly of the Organization and by one in the Executive Council (→ International Organizations, Observer Status). Affiliated members may themselves send observers to the meetings of the General Assembly.

D. Legal Consequences of Membership

A State adheres to the constitution of an international organization when it accepts membership. Adherance entails the obligation to support the organization loyally in its functioning. On the other hand, by accepting a State as a member, the organization undertakes the reciprocal obligation to cooperate with that State.

The obligations of members are: (1) to participate in the organization's work by sending delegations to the meetings of its organs; (2) to pay part of its expenses; and, in general, (3) to fulfil the obligations enumerated in the constitution.

The rights of the members are; (1) to participate in the plenary meetings of the organization; (2) to exert freely the rights to speak and to vote; and, in general, (3) to exercise all rights granted to members either by the constitution or by the customary rules of the organization. Normally, all members have the same rights. Discrimination against one or more members would be contrary to the principle of solidarity on which all international organizations are based (→ States, Equal Treatment).

E. Termination of Membership

1. Withdrawal

(a) Withdrawal based on a constitutional provision. Many constitutions of international organizations permit the members to withdraw. Usually such withdrawals become effective after one year. On that date, most rights and obligations of membership will cease. Members will remain bound, however, by conventions made by international organizations which they have separately ratified. It is not quite clear whether withdrawal from the organization releases a member from prior binding decisions taken by the organization. Like international treaties, binding decisions of international organizations seek to create rules of law the continuing applicability of which may not be unilaterally denied. On the other hand, a legal obligation to comply with binding decisions may no longer be felt once the member has withdrawn. International → sanctions will no longer be possible. Decisions of international organizations which bind individuals (→ Individuals in International Law), such as regulations of the European Communities, become part of the national legal order of the participating States. In that capacity, such decisions will live on after termination of membership, until the competent organs of the national legal order concerned amend or repeat them.

(b) Withdrawal in the absence of a constitutional provision. In order to underline their universal character, several global international organizations did not incorporate any provisions for withdrawal in their constitutions. This caused severe problems when, in the early 1950s, several States announced their withdrawal from the

→ World Health Organization and from the → United Nations Educational, Scientific and Cultural Organization. As these moves were constitutionally impossible, the organizations refused to accept the withdrawals and continued to send documentation to the States concerned. These States, on the other hand, considered themselves no longer bound by the rules of the organization and refused all future cooperation. A compromise was found after some years when the States expressed their wish to return to the organization. The procedure for admission to membership was not applied to them, nor had they to pay all of the contributions for the years they had not participated. They revoked their withdrawals and paid a token payment of about five per cent of their contributions for each year of their absence.

In 1965 Indonesia decided to withdraw from the UN. The organization virtually accepted the withdrawal, even though it was not based on a constitutional provision, and could hardly have been covered by the declaratory statement on withdrawal accepted at the San Francisco conference at which the UN Charter was drafted. After 20 months Indonesia revoked her withdrawal. Again, no readmission procedure was considered necessary. Indonesia paid ten per cent of her assessed contributions for the time of her absence and was considered as having continued her membership.

The debates on the above withdrawals disclosed two different schools of thought on the legality of withdrawal in the absence of a constitutional provision. A large group of States, including all the East European States, consider the right to withdraw to be inherent in their → sovereignty. In their opinion, no State can be obliged to cooperate in an international organization. Other States read into the constitutions of international organizations a multilateral engagement which cannot be broken unilaterally.

2. Expulsion

Many international organizations provide for the expulsion of members which do not fulfil their obligations. Expulsion may be a final means of sanction in order to persuade a member to observe the rules of the organization. It may also serve to protect an organization against members which obstruct its work. Such a protection against obstruction is especially important for organizations which require their members' unanimity on important decisions, as is the case in Comecon. In recent years, expulsion has also been used against members which violate basic norms of mankind, without necessarily failing to fulfil their obligations under the constitution of the organization. In particular, the Republic of South Africa has been expelled from many international organizations because of her policy of → apartheid.

Most constitutions of international organizations provide procedures for effecting expulsion. Without constitutional provision, formal expulsion is impossible, but substantially the same result can be obtained by excluding a member from further participation (as with Cuba in the → Organization of American States) or by proposing an amendment to the constitution which may, pending its ratification, cause the withdrawal of the member concerned (as occurred in the cases of Spain in the → International Civil Aviation Organization (1947) and of South Africa in the → International Labour Organisation (1964)).

3. Disappearance of the Member or Dissolution of the Organization

Membership will also come to an end when a member ceases to exist as an independent State (→ States, Extinction). Thus Austria lost her membership in the → League of Nations in 1938 and the three → Baltic States lost their membership in several international organizations when they were incorporated into the Soviet Union in 1940. The Spanish Sahara lost her membership in the → Universal Postal Union when she was divided between Morocco and Mauritania in 1976. When in 1958 Syria and Egypt merged into the United Arab Republic, their separate membership in several international organizations ceased. When three years later Syria seceded (→ Secession) from the United Arab Republic, she resumed her membership in all organizations of which she had been a member in 1958. None of these organizations considered it necessary to readmit Syria. We may, therefore, conclude that the disappearance of a member because of merger with another State need not cause an irrevocable termination of membership.

Membership for all comes to an end when the organization is dissolved (→ International

Organizations, General Aspects). Even when a new international organization succeeds to all of a defunct organization's responsibilities, it will never take over the membership itself (→ International Organizations, Succession). Only those States which duly ratify its constitution will become members of the new organization.

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INTERNATIONAL ORGANIZATIONS, OBSERVER STATUS

1. The Role of Observers

Normally, the organs of international governmental organizations are composed of representatives of the member States (→ International Organizations, Membership). There are others, however, who are also able and willing to contribute to the work of the organization. In order to profit from their services or to spread knowledge about the organization, many international organizations admit others besides their members to their meetings. These others are called observers, even though they normally perform a more active role than simply observing.

Observers are admitted to the meetings; that is, not merely to the public gallery, but also to the conference hall, which enables them to speak informally with the delegates in the lobby. Usually, observers are entitled to circulate documents or even to make official proposals; when they have not been granted this power, they can make suggestions to the delegates in the lobby.

Observers receive the official documentation of the organization and, normally, all conference documents of the sessions they attend. While they may be permitted to speak at the meetings, they never have a right to vote.

The rights and obligations of observers are enumerated by the organization which grants observer status, normally in a special agreement with the authority sending the observers. The granting of observer status implies the wish for the establishment of some sort of relationship with the authority sending the observers.

Granting observer status may be interpreted as a form of → recognition, when the legal qualification of that authority to act on the international plane is disputed. Furthermore, the admission of observers entails some extra costs for the organization, especially for additional documentation. Therefore, the right to grant observer status normally lies with the organ competent to perform the external relations of the organization. Individual organs or the secretariat of an international organization do not have the power freely to invite observers.

2. Types of Observers

(a) Observers from member States

Non-plenary organs of international organizations are meant to be smaller and therefore more effective than plenary organs. In line with this consideration observers are often not admitted to the non-plenary organs. Some organizations, however, do admit observers of the member States to such meetings.

(b) Observers from non-member States

Some States are closely linked to particular international organizations without being members. Thus Yugoslavia and Finland have close ties to the → Organisation for Economic Co-operation and Development; also all non-members of the → United Nations are involved in some of the work of that organization. In such cases the organization usually grants observer status to non-members.

(c) Observers from national liberation movements

Since the early 1970s the UN and several other international organizations have granted observer status to national → liberation movements. In 1971 representatives of a number of African

liberation movements were admitted as observers to the United Nations Economic Commission for Africa (→ United Nations, Economic Commissions). In 1972 they attended meetings of the Fourth Committee of the → United Nations General Assembly (the committee for → non-self-governing territories); and in 1974 the → United Nations Economic and Social Council (ECOSOC) called upon the → United Nations Specialized Agencies to admit observers from national liberation movements whenever items were discussed which could affect their home territories. From that year onwards, the UN General Assembly has invited representatives of liberation movements to participate in the regular work of its main committees in all proceedings relating to their home countries. In each of these cases the → Organization of African Unity was charged to decide which liberation movements were to be invited. Since 1974, the → Palestine Liberation Organization has received the same treatment as the African liberation movements in most international organizations.

(*d*) *Observers from other international organizations*

Observers from international organizations are often invited to each others' meetings. Appointment is usually by the secretariat of the sending organization. Thus the UN-related organizations and many regional organizations exchange observers.

Many → non-governmental organizations send observers to sessions of ECOSOC and to some other Specialized Agencies, such as the → United Nations Educational, Scientific and Cultural Organization.

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INTERNATIONAL ORGANIZATIONS, PRIVILEGES AND IMMUNITIES

A. Historical Background

Just as inter-governmental organizations (IGOs) are newly evolved international entities, so their status, privileges and immunities have only relatively recently become the subject of negotiations, practical arrangements and academic studies. Though some pertinent issues were raised and dealt with from the time the first public international organizations emerged during the latter half of the 19th century, the subject did not become a significant one until the great growth and proliferation of such organizations after World War II.

While this field of international law is, like others, a constantly evolving one–an evolution reflecting not only the quantitative increase in the size and significance of international organizations but also recent tendencies to de-emphasize State immunities (→ Sovereign Immunity) on the national as well as on the international level–two specific developments deserve comment: (1) the formulation, based on the experience of the → League of Nations and the → International Labour Organisation before and during World War II, of the 1946 Convention on the Privileges and Immunities of the United Nations (UNTS, Vol. 1, p. 15), which became the prototype of the instruments covering most other world-wide organizations as well as many regional ones; and (2) the low-key attempt by the → United Nations,

starting in the late 1950s and still continuing, to codify this field of law through the → International Law Commission (ILC), which has so far resulted solely in the ill-received 1975 → Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

B. Rationale

As C. Wilfred Jenks, the leading exponent of this subject pointed out, the provision of privileges and immunities to international organizations (hereinafter sometimes "international immunities") is neither merely a housekeeping problem for those organizations nor an insidious encroachment on the equal application of the rule of law, but is rather an essential device for protecting these organizations from unilateral and sometimes irresponsible interference by individual governments. The constitutional instruments of inter-governmental organizations elaborately define their decision-making processes, and in particular the type and degree of influence each government is to have in respect of the organization. It is therefore considered unacceptable for individual governments to be able, whether through their executive, legislative or judicial organs, to require an IGO to take certain actions by commands addressed to the organization itself or to any of its officials. This rationale is similar to that motivating various legal devices that protect a federal structure from its component entities.

Originally, two models for international immunities presented themselves: sovereign immunity, which a State grants itself and its organs, and diplomatic immunity, which a State grants other sovereigns and their organs (→ Diplomatic Agents and Missions, Privileges and Immunities). Sovereign immunity, basically self-referring, consequently seemed inapplicable to relations between States and IGOs, and has in any event recently been much diminished in most democratic countries. Diplomatic immunity, though also under considerable attack in many countries on both conceptual grounds and on practical ones relating to the massive increase in diplomatic personnel, has provided a number of useful analogies for the actual rules governing State-IGO contacts, particularly in respect of the protection of governmental representatives to those organizations. On the other hand, certain concepts basic to diplomatic intercourse, such as → reciprocity, have no applicability to international immunities. Thus, these have developed on an essentially novel and basically sounder basis: that of function. As expressed in Art. 105(1) of the → United Nations Charter: "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes", and in Art. 105(2): "Representatives... and officials... shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization."

Finally, each IGO must formulate its immunities relatively uniformly and taking into account situations in which it may have to function in a temporarily hostile national environment.

C. Legal Bases

1. Treaties

Though, as pointed out below, international immunities may sometimes be based on or defined by national legislation, as well as on certain → general principles of law, the unilateral nature of the former and the vagueness of the latter make it preferable that these immunities be expressed in treaty instruments. These instruments are of various types, and often a given organization may rely simultaneously on several agreements even in respect of a single State.

(a) Constitutional instruments

The constitutional instrument of almost every IGO declares at least the basic principles of the international immunities of the organization established thereby, or such provisions may appear in a simultaneously concluded protocol. The members of the organization thereby undertake, *vis-à-vis* each other, to respect the organization and its organs. Usually, as in UN Charter Art. 105, these → declarations are brief and general, though in respect of most financial institutions, such as the → International Bank for Reconstruction and Development (IBRD) and the → International Monetary Fund, their Articles of Agreement set out certain rights of the organizations in considerable detail.

(b) General agreements

Because the constitutional provisions relating to immunities are generally considered to be insufficiently specific, the member States, usually acting through the competent organs of the IGO concerned, normally formulate a detailed privileges and immunities agreement. In some instances, such an agreement is made applicable to a whole complex of related organizations. Thus the → United Nations General Assembly at its very first session adopted, on the basis of a draft formulated by its Preparatory Commission, the Convention on the Privileges and Immunities of the United Nations (sometimes referred to as the "General Convention"), and at its second session adopted the very similar Convention on the Privileges and Immunities of the Specialized Agencies (→ United Nations Specialized Agencies). After some decades of experience with these agreements, the Assembly considered the preparatory work done by the ILC since 1962 on part of this subject (i.e. the status of governmental representatives to IGOs) and convened the 1975 United Nations Conference on the Representation of States in Their Relations with International Organizations, which adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. Although this agreement has not yet entered into force, and is in any event unlikely to do so for a significant number of host States, the ILC has since resumed its work on other parts of this subject with a view to the possible formulation of a treaty defining the status of IGOs and of their officials.

A number of regional organizations have followed a pattern similar to that of the → United Nations, and indeed the substantive provisions of their multilateral immunities treaties in part follow closely those of the General Convention. Naturally, however, regional agreements are adapted to the particular circumstances of the countries to which they apply.

It should be noted that in form these agreements are multilateral instruments concluded among some or all of the member States of an IGO; even if formulated by an organ of the latter, it is not always clear whether or not the IGO itself is a party to the agreement. It is, however, the prevailing view that the UN itself should be considered to be a party to the General Convention. Thus, in a sense this is not only a multilateral inter-State agreement, but also a series of bilateral agreements between the UN and each State party to the Convention, defining rights and obligations for both parties.

(c) Bilateral agreements

Although the general privileges and immunities agreements are sufficient to cover most routine contacts between IGOs and their members, whenever more intensive or sustained relations are foreseen these agreements are supplemented or even replaced by specific treaties addressed to that relationship. In many cases these treaties, besides defining other necessary aspects of the relationship, specify precisely how the general immunities agreement is to apply to that relationship; indeed, if the State concerned is not a party to the general agreement, the treaty may make that agreement applicable to the specific relationship.

A prime example of a special relationship that normally requires a specific treaty is that of an IGO to its host State, between which a so-called headquarters agreement is usually concluded. That agreement normally defines the premises that constitute the headquarters seat (whether or not these are provided by the host State) and assigns particular rights and responsibilities with regard to those premises to the organization and to the State, while also specifying how the general privileges and immunities of the IGO are to apply (→ International Organizations, Headquarters). When the host/guest relationship is to be only a temporary one, for a particular meeting, then a so-called conference agreement is concluded, which is in effect a simplified and temporally limited headquarters agreement. Other important examples of such bilateral agreements are those relating to the provision of technical assistance, and those under which international forces may be stationed in a State for peacekeeping or other purposes (status-of-forces agreements; → Military Forces Abroad; → United Nations Forces).

Unlike the constitutional instruments and the general conventions, to which usually only members of the IGO concerned may be parties, bilateral agreements relating or referring to privileges

and immunities may be concluded between an IGO and a non-member State (e.g. the agreement defining the privileges and immunities of the UN in Switzerland).

2. National Legislation

Many States have adopted domestic legislation defining the privileges and immunities of some or of all IGOs, or relating to some aspect of their status. Usually such legislation is designed to implement domestically the international obligations that are defined by treaty instruments such as those discussed above. In some States, the legislation is meant to supplement these treaties. Finally, in a few States unwilling to enter into such treaties, the national legislation largely takes the place of treaty provisions.

Although IGOs rely on national legislative provisions applicable to them, particularly when it is convenient to do so *vis-à-vis* national authorities, such provisions can in no way alter or diminish the rights that they are entitled to by reason of treaties (especially their constitutional instruments, to which all members are parties), or of any applicable general principles of international law.

3. General International Legal Principles

Despite the relative novelty of this field of international law, there can be little doubt that certain aspects of IGO immunities have attained the status of general principles of law recognized by the international community. While, for obvious reasons, both the organizations and their members generally prefer to rely on specific treaties or on applicable national legislation to define their respective rights and obligations, there are certain instances when such reliance is not possible or sufficient.

Such circumstances may arise when no applicable treaty relationship exists at all between or relating to an IGO and a State – for example, if the State is not a member of the organization. However, as the → International Court of Justice (ICJ) recognized in → Reparations for Injuries Suffered in Service of UN (Advisory Opinion), even non-member States may not be able to avoid all responsibilities towards an international organization.

In some cases, although certain relevant treaty obligations exist, a State concerned may not be a party to any agreement that regulates a particular question in detail. In such instances an IGO may contend that a particular provision (e.g. absolute immunity for official acts) of such agreements actually expresses a generally applicable principle that is in any event binding on States.

D. Substantive Privileges and Immunities

Although the international immunities granted by the various multilateral and bilateral treaties and national legislation mentioned above are not identical, there are very substantial similarities, not only among the several instruments relating to world-wide IGOs but also including those covering regional agencies. Indeed, it is this substantial identity that makes it possible to assert the binding character of certain generally accepted principles. For convenience, it is usual to classify these immunities according to their object: the IGOs themselves, governmental representatives to IGO organs, IGO officials, and other persons covered by some immunities. However, classification can instead follow the type of immunity (though some are inapplicable to certain objects): the grant of status, jurisdictional immunity, inviolability of premises, fiscal exemptions, and rights and freedoms relating to communication. The following account uses the former categorization as the principal one and the latter as a secondary one.

1. Immunities of International Organizations

(a) Status

IGOs are generally granted (international) juridical personality, and in particular the legal capacity to contract, to acquire, hold and dispose of real and personal property, and to be a party to legal proceedings (→ Subjects of International Law).

(b) Jurisdictional immunity

Most IGOs enjoy full immunity from all types of legal process, except in so far as they themselves waive such immunity. Generally, even the right to waive is restricted so that it can apply only to a particular proceeding (thus precluding unintentionally broad or implicit → waivers) and cannot extend to any measures of execution. The devices designed to prevent IGOs from abusing their jurisdictional immunity to the detriment of

third parties are described in the final sub-section of this article.

By contrast, the IBRD and most specialized or → regional development banks or funds are liable to suit in the courts of any country in which they carry out certain types of operations.

(c) Inviolability of property

Except as explicitly allowed by an IGO (usually through its executive head), governmental authorities are precluded from entering IGO premises, or from in any way searching, seizing or interfering with any archives or other IGO property, whether or not on IGO premises and by whomsoever held.

Nevertheless, IGO premises enjoy only limited "extraterritoriality". Thus, national laws, both civil and criminal, generally apply within such premises, though the organization can supersede these through "headquarters regulations" or other internal rules (→ International Organizations, Internal Law and Rules). Similarly, national courts usually have jurisdiction over acts done on such premises, though the enforcement of many aspects of national law may be precluded by the inviolability of these premises and by the immunity of the actors.

(d) Fiscal immunities

IGOs are generally free from restrictions on the holding, transfer or conversion of any currency or of gold – though naturally this does not mean that they may disregard restrictions placed on certain payments (e.g. voluntary contributions) by a donor. The organizations are also to take into account any objections by member States against practices damaging to their interests.

IGOs are exempt from all direct taxes and customs duties on their transactions or property, and also largely from indirect taxes, excepting public utility fees. When required to pay significant indirect imposts, such as sales or value-added taxes, arrangements are generally made for the government to refund these (→ Taxation, International).

(e) Communication

IGOs are generally free of prohibitions and restrictions on the export or import of articles for their own use, especially publications. Naturally, health and safety precautions must be observed.

The official correspondence and communications of IGOs are to be free of censorship. They may use codes, diplomatic pouches and couriers. The communications of IGOs are generally to receive the most favourable available rates, whether governmental or diplomatic, except to the extent such treatment would be contrary to treaties relating to certain media.

2. Immunities of Governmental Representatives

The status of governmental representatives to IGOs, whether under the General Convention and other similar instruments, or under the 1975 Vienna Convention, is substantially the same as that of diplomats in normal bilateral international intercourse (→ Diplomatic Agents and Missions). Indeed it is not unusual, and is explicitly foreseen in the → Vienna Convention on Diplomatic Relations (1961), that a State accredits the same person simultaneously to a foreign government and to one or more IGOs. Consequently the details of the substantive rights of governmental representatives to IGOs are largely derived from the provisions of the 1961 Convention.

The first principal difference between representatives accredited to governments and those accredited to IGOs is that reciprocity applies fully to the former and should not apply at all to the latter (or at least only to an extent that will not interfere with the carrying out of tasks *vis-à-vis* the IGO). The second is that the host government has no say as to who is to represent a foreign State at an IGO within the government's territory. Nevertheless, if such representatives abuse their privileges, the host State may, subject to appropriate formalities, require them to leave its territory. In principle, the sending State is also required to waive the immunity of its representatives if it can do so without prejudice to its interests, though in practice this is rarely requested and still more rarely done – except perhaps in respect of minor infractions, such as traffic violations.

3. Immunities of International Officials

Special immunities, the principal ones being summarized below, appertain to the officials of IGOs, that is, to persons who are in their employ

and subject to their regulations and discipline. Generally, these immunities apply equally to all such officials or staff members, whether their rank is high or low, their assignments diplomatic, professional, technical, secretarial or merely manual, whether they were hired internationally or locally, for long terms or short ones (though locally hired persons paid at hourly rates are usually not considered to be officials), and whether or not they are nationals of the State *vis-à-vis* which the immunity is to be asserted. However, certain deviations from these principles have been accepted, and others regularly constitute the subject of negotiations and disputes between IGOs and States; in particular:

(i) The executive heads of IGOs and, for larger ones, their principal assistants, are often granted, in addition to the normal immunities of officials, the equivalent of diplomatic status; some countries grant such status to all officials at the senior professional level. In addition, certain types of officials, such as safeguards inspectors of the → International Atomic Energy Agency, are entitled to practically diplomatic immunities during official travel.

(ii) Certain countries are unwilling to grant the full range of immunities to their own nationals, in particular exemption from military service and freedom from taxation and import duties. The IGOs always insist that at least the core immunities, such as total immunity for official acts, must be preserved, and in some instances will compensate officials deprived of certain privileges (e.g. tax exemption on official salaries) by their governments, so as to preserve equality among staff members.

(iii) In conference agreements, host States are sometimes reluctant to grant all privileges to local staff employed for brief periods by an IGO; here also, the organizations insist on the preservation of at least total immunity for official acts.

(a) Jurisdictional immunity

All IGO officials are immune from all national legal processes in respect of all official activities, and this immunity is, explicitly or implicitly, understood to persist even after the end of the official's appointment. In addition, those officials who are granted quasi-diplomatic status also enjoy a personal immunity from all legal process, but this is generally only available *vis-à-vis* certain governments and during the period a particular post or rank is held.

Should officials be accused of having abused their immunity, the employing IGO is required to waive it, if it can do so without prejudice to its own interests and the assertion of the immunity would impede the course of justice. As the immunity is that of the organization, the officials themselves cannot, technically, waive it. If the IGO refuses to waive the immunity and the State concerned considers the matter serious, it can generally insist, after following prescribed consultation procedures, that the official leave its territory.

In recent years the UN General Assembly became concerned about the arrest of a number of staff members, generally by authorities of their own government, without the employing IGO having had an opportunity to inform itself about the formal accusation and to decide whether to assert or to waive immunity. The General Assembly in 1981 consequently adopted Resolution 36/262 calling on States to respect the immunity of international officials and to cooperate with the competent executive heads in their endeavours to protect their staff members (→ Civil Service, International).

(b) Immunity from national service

IGO officials generally enjoy absolute or sometimes only restricted immunity from military service obligations. While some States have declined to grant this to their own nationals, none has failed to do so in respect of foreign officials and their families.

(c) Fiscal immunities

In order to preserve the equality of net remuneration among IGO staff members, they are normally to be exempted from income taxation in respect of all emoluments received from the organizations (except, usually, periodic pensions). If a government fails to grant such an exemption to some officials (e.g. its nationals or permanent residents) and these are consequently taxed, the IGO normally reimburses them in order to preserve the principle of equality of emoluments, and generally seeks to recapture part or all such payments from the government concerned.

Some States have also agreed not to tax officials on any non-IGO income received from outside its territories. Similarly, some States have agreed that periods of time spent in the country on official business are not relevant for tax purposes, such as for the imposition of an estate tax.

IGO officials are to be granted such currency exchange facilities as are afforded to comparable officials of diplomatic missions.

On their first entry into a country, IGO officials may generally bring in their furniture and personal effects duty-free; in some instances later duty-free imports of goods, vehicles and other items may also be permitted. This privilege is sometimes implemented by permitting IGOs to establish commissaries.

(d) Travel

IGO officials and their families are to be free from immigration restrictions and alien registration (→ Aliens). Their speedy travel is to be facilitated, and in international crises they are to be granted the same → repatriation facilities as diplomats.

Officials of the UN and of the organizations in its system may use the UN *laissez-passer* as a substitute for or supplement to their national → passports; some regional agencies are also authorized to issue similar travel documents. When visas are required, these are to be granted promptly and generally free of charge.

4. Immunities of Other Persons

IGOs may also be concerned with securing the immunity of persons who are neither clearly the representatives of member States nor officials of the organization itself.

One such category is that of "experts on mission", who are persons charged with performing, individually or collectively, certain tasks for an IGO, and who may have been selected therefor by their respective governments or by the organization. Many agreements contain specific provisions assuring such persons relatively high (e.g. complete prohibition of personal arrest) but specifically focused immunities.

In connection with various IGO activities, other types of persons may have to be assured of certain rights. These may include representatives of non-member States, officials of other IGOs, representatives of → non-governmental organizations, representatives of information media, or even contractors. Depending on the nature of the activity, the agreement negotiated between the IGO and the State concerned may provide merely for the right of entry and exit for certain of such persons, or for whatever more extensive immunities are considered appropriate.

E. Settlement of Disputes

1. Disputes Relating to Immunities

Most agreements providing for international immunities include some method of resolving disputes arising out of the agreement, including those relating to immunities; the specified methods may not, however, suffice to resolve all types of situations. Thus the constitutional instruments of most UN family organizations permit organs of the IGO to request advisory opinions from the ICJ (→ Advisory Opinions of International Courts) but do not provide that such opinions need be accepted as binding in disputes between the organization and a member State. Furthermore, a State itself cannot request an advisory opinion. These deficiencies are cured in instruments such as the General Convention, which provides that inter-State disputes are to be submitted to the ICJ as contentious cases, while disputes between the UN and a member State are to be submitted for an advisory opinion that is binding on both parties. Certain regional organizations, which do not have access to the ICJ, instead have their own judicial organs, such as the → Court of Justice of the European Communities (CJEC), which are also competent to resolve disputes relating to immunities.

Bilateral immunities agreements normally provide for → arbitration, usually by a panel of three arbitrators.

As a matter of practice, almost no privileges and immunities cases have been litigated in international courts or arbitrations, excepting in the CJEC. The only relevant case in the ICJ is the Reparation for Injuries case cited above.

2. Other Types of Disputes

The jurisdictional immunity of IGOs is not intended to free these organizations from all obligations to settle their disputes with third parties, such as contractors, persons tortiously injured, employees, etc. The object of this im-

munity is merely to save IGOs from having to litigate unwillingly in national courts. Consequently, the general multilateral immunities conventions normally oblige the IGOs concerned to make arrangements for appropriately resolving private law disputes to which the organizations are parties or that relate to officials whose immunity the organizations decline to waive. On the other hand, bilateral agreements frequently provide that the State party thereto will, on its own account, defend any action that could normally be brought against the IGO (→ Contracts between International Organizations and Private Law Persons).

To comply with those provisions of the immunities conventions, the IGOs have resorted to various devices. To settle disputes with their staffs, who potentially are the largest category of litigants, a number of organizations have established → administrative tribunals and most others have submitted to such a tribunal established by another organization (e.g. → International Labour Organisation Administrative Tribunal; → United Nations Administrative Tribunal; → World Bank Administrative Tribunal). To settle disputes with third parties, some organizations have provided for resort to their administrative tribunals. More frequently, they engage in extended negotiations, and then offer *ad hoc* or institutional arbitration if the negotiations are unproductive and the other party insists. Sometimes, indeed, arbitration provisions are included in the more significant contracts IGOs enter into. Still another device is to procure insurance, and to require the insurance company to defend suits arising under the policy.

F. Evaluation

The régime of privileges and immunities of international organizations that has evolved in the post-war period is relatively uniform with respect to most IGOs, be they world-wide or regional. The system is well-established, relatively stable and not seriously defective. However, in the long run the increasing resistance towards immunities of all kinds, including those deriving from inter-State relations, and the pressures resulting from the significant increase in the number of these organizations, their activities and their staffs, are likely to lead to substantial clashes involving and possibly significantly diminishing even the functional immunities of IGOs. This could occur, for example, by introducing the heretofore largely inapplicable distinction between *jure imperii* and *jure gestionis* to the actions of IGOs. To defuse potentially dangerous attacks it may be necessary to establish standing international tribunals for the litigation, at the request of either party, of all types of private law disputes involving IGOs and persons associated with them, as well as, perhaps, disputes relating to diplomats and foreign governments.

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INTERNATIONAL ORGANIZATIONS, RESOLUTIONS

1. Notion

Before World War II, the word "resolution" was normally used in the sense of a binding

decision made by an international organization or an international conference (→ Congresses and Conferences, International). Usually, organizations and conferences took their decisions unanimously, so that a resolution could be seen as a simplified form of inter-State agreement. Gradually, however, the notion has lost this character. Nowadays, resolutions are no longer seen as acts of → governments united in an international organization, but rather as acts of the organizations themselves. And as international organizations usually have no power to take binding decisions, the notion "resolution" gradually lost association with the idea of binding force.

2. *UN Resolutions*

In the → United Nations, "resolutions" are the formal texts in which the conclusion of debates are formulated. They may be divided into the following categories:

(*a*) *Internal rules*

Many UN resolutions regulate internal matters of the organization, such as the composition of subsidiary organs, the salary scales of the staff or the establishment of the budget for the coming years. As the organization is competent to decide on such matters, these rules are binding rules of law (→ International Organizations, Internal Law and Rules).

Some internal rules, such as the decision to set up a peacekeeping force (→ United Nations Peacekeeping System), may have important external effects. The competence to make such rules may later be questioned when the decision-maker has no competence to make rules binding outside the legal order of the organization itself. In the UN, the legality of the → United Nations General Assembly's resolutions to set up an Emergency Force in Egypt and to undertake military operations in the Congo were disputed (see → United Nations Forces). However, in its → Certain Expenses of the United Nations Advisory Opinion, the → International Court of Justice presumed that these types of decisions were not *ultra vires* acts of the organization as long as they were appropriate for the fulfilment of one of the stated purposes of the organization.

(*b*) *Recommendations*

Many resolutions of UN organs "recommend" action to the member States. It is understood that members have complete freedom to follow the recommended policy or not. But if a member formally accepts a recommendation, it may be considered bound by it because of the acceptance.

(*c*) *Declarations*

Sometimes UN organs, in particular the General Assembly, wish to underline the legal importance of a particular decision. They then may choose to do so by using the form of a → "declaration" instead of a "recommendation". As the word indicates, a declaration confirms rules of existing law rather than creating new ones. A declaration may therefore be appropriate for the → codification of existing → customary international law or existing → general principles of law. Often it is solely the organization's desire to underline the importance of its decision which leads it to use the term "declaration". By themselves, declarations have no stronger legal force than recommendations. They may, however, express binding law, insofar as they codify rules which are binding on other grounds, for example as customary law, or as general principles of law.

(*d*) *Conventions*

Sometimes, UN organs present their decisions in the form of treaty texts. These conventions will be binding international law for the States which ratify them (→ Treaties, Conclusion and Entry into Force). In this respect, they do not differ from other → treaties. Even before they are ratified, conventions drafted by international organizations will have some effect for the organizations themselves. It may be assumed that the subsidiary organs and the staff of an international organization may not act contrary to a convention adopted by the principal organ. Often, non-members of the organization are invited to adhere to such conventions.

(*e*) *Binding decisions*

In the case of a threat to the peace (→ Peace, Threat to), breach of the peace (→ Use of Force) or act of → aggression, the → United Nations

Security Council may decide on measures to be taken to maintain or restore international peace and security. The members of the organization have agreed, by signing the → United Nations Charter or by accepting the obligations contained therein, to carry out these decisions. Security Council decisions are the only decisions of the UN which are legally binding on the member States.

3. Resolutions of Other Universal Organizations

Most other universal organizations use the same sort of resolutions as the UN, although with a slightly different frequency of which type is in fact used. Compared to the UN, the → International Labour Organisation uses conventions more frequently. The → World Health Organization may adopt "regulations" which are binding on its members except when they notify their rejection or reservations (→ International Legislation). With the same effect, the → International Civil Aviation Organization is empowered to adopt "international standards". Even without ratification, "international standards" are binding law in the airspace above the → high seas (→ Air Law).

4. Resolutions of Regional Organizations

(a) Recommendations and conventions

It has been accepted that all international organizations may issue recommendations under customary law. Since a convention is basically a recommendation to adhere to a particular text, we may assume that all international organizations also have an inherent right to adopt conventions.

(b) Regulations

Occasionally, international organizations have the power to adopt legal rules which are binding upon individual citizens (→ Individuals in International Law) in the member States. According to the Treaty establishing the → European Economic Community, regulations are of general application, binding in their entirety and directly applicable in all member States (→ European Law). They are to be applied by the members' national courts with priority over possibly conflicting municipal legal rules (→ International Law and Municipal Law; → International Law in Municipal Law: Law and Decisions of International Organizations and Courts). This means that national authorities can do very little legally to obstruct their application, even if they should wish to do so. Of all types of resolutions, regulations are the strongest form of international legislation.

Outside the → European Communities, there are very few international organizations empowered to make similar rules of law. The "international standards" of the ICAO come close to it, but only for the airspace above the high seas.

(c) Binding decisions

Only rarely can international organizations address binding decisions to individuals other than their own staff. Some regional organizations have the power to address binding decisions to their members which, however, do not directly effect their citizens. These two sorts of binding decisions should, therefore, be distinguished.

The European Communities may address decisions to individuals and corporations within the member States. These decisions are binding upon the addressees, without any need of further measures by their governments. The national law-enforcement procedures can be used for their execution if an addressee is unwilling to comply.

As noted above, the Security Council can address binding decisions to UN member States. Apart from that organ, several regional organizations have the power to take decisions which are binding upon their member States. In most of these organizations, unanimity is a condition for the adoption of binding decisions (→ Voting Rules in International Conferences and Organizations; → Veto); in the European Communities, unanimity is not required legally, but is sought in practice.

The most important regional organizations empowered to take decisions binding upon their member States are the European Economic Community (EEC Treaty, Art. 189); the → European Atomic Energy Community (Euratom Treaty, Art. 161); the → European Coal and Steel Community (ECSC Treaty, Art. 14); the League of Arab States (Constituent Treaty, Art. 7; → Arab States, League of); the → Benelux Economic Union (Constituent Treaty, Art. 19); the → European Free Trade Association (Con-

stituent Treaty, Art. 32(4)); the → International Energy Agency (Constituent Treaty, Art. 52); and most commodity councils (→ Commodities, International Regulation of Production and Trade). The → Organisation for Economic Co-operation and Development may take binding decisions, but these decisions become binding upon the members only after they have complied with the requirements of their own constitutions. In fact, this means that decisions of the OECD require subsequent ratification and, therefore, come closer to being conventions than to being binding decisions such as those of the other organizations mentioned.

The legal force of binding decisions is the same as that of treaties. Such decisions derive their legal status from the treaty provisions which empower the organization to bind its members in this way.

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INTERNATIONAL ORGANIZATIONS, RESPONSIBILITY

1. Notion

With the emergence of international organizations as → subjects of international law, capable of possessing and assuming rights and obligations under international law (→ International Organizations, General Aspects), the question is posed whether and under which conditions → internationally wrongful acts may be attributed to an international organization so as to entail its responsibility.

The responsibility of States (→ Responsibility of States: General Principles) constitutes an inherent quality of the international legal personality of → States, which were at all times regarded as "subject to the possibility of being held to have committed an internationally wrongful act entailing [their] responsibility" (Art. 2, Draft Articles on State Responsibility, YILC, 1979 II, Part 2, p. 91). In contrast to this, the capacity of international organizations to be held responsible under international law corresponds to their respective capacities to act under international law. The responsibility of international organizations varies, therefore, according to the scope of their international legal personality. It will depend on their legal status *vis-à-vis* both member and non-member States (→ International Organizations, Membership), and will differ from organization to organization.

The notion of responsibility of international organizations raises two basic questions: Firstly, whether and under which conditions international organizations are obliged to comply with certain obligations under international law (custom, conventions or other means); and secondly, as to what the legal consequences of non-compliance are, in particular regarding the liability of international organizations for damage caused in violation of such obligations. Several alternatives offer themselves as answers to these questions in theory, and have partly been followed in practice: The member States only are held liable, be it jointly, or severally and jointly; the organization and the member States are held severally and jointly liable; the organization is held primarily liable and the member States only secondarily liable; and finally, the international organization is held exclusively liable.

2. Historical Evolution of Legal Rules

The evolution of legal rules concerning the responsibility of international organizations goes hand in hand with the actual performance and the planning of operational activities of international organizations. Two major fields of activities and two types of international organizations have been of outstanding significance for the formulation of principles and rules of responsibility

of international organizations in practice and theory: peacekeeping operations undertaken by the → United Nations on the one hand (→ United Nations Peacekeeping System; → United Nations Forces); and, on the other, the operation of objects in outer space (→ Space Activities, Liability for) and of ships on the → high seas, as well as some other technical activities undertaken by international organizations of a technical-servicing nature (e.g. safeguard activities by the → European Atomic Energy Community (Euratom) or the → International Atomic Energy Agency (IAEA) with regard to the non-proliferation of fissionable materials).

(*a*) *UN responsibility for peacekeeping operations*

Whether responsibility for activities of UN Forces engaged in peacekeeping operations falls upon the member States providing contingents and/or the UN as the controlling authority, has so far been determined by practice and doctrine mainly in favour of UN responsibility. In the regulations issued by the → United Nations Secretary-General for the UN Forces, the UN has always accepted the responsibility to ensure that the forces under its effective control comply with the "general international conventions applicable to the conduct of military personnel" (cf. Regulations of the UN Emergency Force (UNEF) and the UN Forces in the Congo (UNOC), and in Cyprus (UNFICYP)). Also, the legal liability of the UN for damage caused through its personnel acting in violation of the rules of international law applicable to the conduct of hostilities has been accepted by the Secretary-General in several agreements with claimant States (cf. Agreement between Belgium and UN. February 20, 1965, RevBelge, Vol. 1 (1965) p. 559).

Pending the elaboration of a comprehensive set of agreed rules for the conduct of peacekeeping operations by the UN's Special Committee on Peace Keeping Operations (see GA Res. 33/114 of December 18, 1978), the → Institut de Droit International in 1971 and 1975 endorsed the principle of the exclusive liability of the UN for damage caused by its forces in violation of the rules of international law applicable in → armed conflict (cf. AnnIDI, Vol. 54 II (1971) p. 469 and AnnIDI, Vol. 56 (1975) p. 543), a principle which then, as before, met with disapproval by the Soviet Union.

(*b*) *Responsibility of international organizations for technical activities*

The principles and rules of international law concerning the responsibility of international organizations for activities in outer space are taking shape within the newly emerging space law (→ Space and Space Law), in particular within the framework of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies (→ Outer Space Treaty, January 27, 1967; UNTS, Vol. 610, p. 215), the Convention on the International Liability for Damage Caused by Space Objects (Convention on Liability, March 29, 1972; AJIL, Vol. 66 (1972) p. 702) and the Treaty Governing Activities of States on the Moon and Other Celestial Bodies (Moon Treaty, December 5, 1979; ILM, Vol. 18 (1979) p. 1434; → Celestial Bodies).

As regards activities undertaken by international organizations, collective responsibility of the organization and the member States is provided for in all these treaties, be it with regard to the responsibility to ensure compliance with the principles and rules of the Space or Moon Treaty, or with regard to liability for damage caused by such activities. According to Art. VI of the Space Treaty, responsibility to ensure that space activities of international organizations are conducted in conformity with the provisions of the Treaty falls on both the organization and those of its member States which are parties to the Treaty. According to Art. XXII of the Convention on Liability, liability for damage caused through space activities of an international organization is to be borne jointly and severally by the organization and those of its member States which are parties to this Convention, provided, however, that the organization has declared that it accepts the rights and obligations of the Convention and, further, that the majority of its members are parties to both the Convention on Liability and the Space Treaty. In this case any claim for compensation is first to be presented, however, to the organization.

The question of the responsibility of inter-

national organizations as operators of ships was discussed at length in connection with the Convention on the Liability of Operators of Nuclear Ships of May 25, 1962 (AJIL, Vol. 57 (1963) p. 268; → Nuclear Ships). The inclusion of provisions on the liability of international organizations in this Convention was postponed, though, as a subject for further consideration by a review conference. By contrast the Draft Convention on the Law of the Sea of May 25, 1980 (UN Doc. A/CONF. 62/WP. 10/Rev.3; → Conferences on the Law of the Sea) straight-forwardly provides both for the responsibility of international organizations in their area of operation to ensure compliance with the relevant treaty provisions, and for their liability in case of damage caused by them (Art. 139). As regards scientific → marine research, Art. 263 of the Convention speaks of the responsibility and liability of "competent international organizations", both as regards compliance with the provisions of the Convention and liability for damage caused to others or to the marine environment (→ Marine Environment, Protection and Preservation). The text leaves open whether international organizations share the responsibility with a concurrent responsibility of their member States. It is left unclear here, as in other cases (cf. Convention on Liability), whether any other constituent acts, such as → recognition by non-member States, are required.

3. *Current Legal Situation*

(*a*) *The UN*

The current legal situation of the responsibility of international organizations reflects prevailing trends in the development of the capacities and personality of international organizations under international law. The UN as an international organization of a universal vocation is, according to the jurisprudence of the → International Court of Justice, vested with an objective international personality, possessing broad powers, and it has therefore been regarded as subject also to "attendant duties and responsibilities" (→ Reparation for Injuries Suffered in Service of UN (Advisory Opinion)), including the responsibility to ensure compliance with the laws of war (→ War, Laws of) and liability fc · damage caused in case of their violation (→ War Damages). With additional functions being entrusted to the UN, the scope of its responsibility is growing.

(*b*) *Other organizations*

As regards international organizations of a technical-servicing nature, the current legal situation is less clear. In sections of → treaties dealing with responsibility, this class of international organizations is repeatedly called upon to ensure compliance with certain rules of international law, without any prior formal commitment on its part. They are called upon to do so, either by themselves (see the Draft Convention on the Law of the Sea) or together with their member States (see the Space Treaty, and the 1980 Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting; UN Doc. A/AC. 105/271, Annex I, p. 8). This amounts, therefore, through the creation of further responsibility for international organizations, to a widening of the basis of obligation in international law by giving third parties, without any other formal precondition a right to the performance of international obligations (e.g. rules of international environmental law) by international organizations engaged in certain activities. In contrast to this, as regards the question of liability, the principle that international organizations constitute a *res inter alios acta* with regard to third parties still prevails. Liability of an international organization for damage *vis-à-vis* a third party therefore requires a constitutive act of recognition by that third party. It seems to be a precondition for this act that an international organization wishing to assume liability must issue in advance a unilateral → declaration to this effect (cf. Art. XXII, Convention on Liability) or commit itself in some other form (cf. Art. 17, Agreement between Euratom and some member States with the IAEA, April 5, 1973, on safeguards under the → Non-Proliferation Treaty; ILM, Vol. 12 (1973) p. 469). So far, the → European Space Agency (ESA) is the only organization which has, on September 23, 1976, issued a declaration accepting liability under the Convention on Liability (ESA/C (75) 10).

4. *Special Legal Problems*

The current state of the law concerning the

responsibility of international organizations leaves a number of problems unsolved. Among them is the question of "piercing the organizational veil", i.e. the distribution of responsibility between the organization and its member States. This is still of paramount importance. What, it is asked, are the requirements in order to avoid either the concurrent responsibility of both the organization and its member States or the sole responsibility of the States, as the case may be, and in order to make international organizations more fully responsible under international law? Within the framework of plans to vest international organizations of a technical-servicing nature with exclusive responsibility towards third parties, a central registration procedure and obligatory insurance as well as the establishment of a guarantee fund have been suggested. The question arises, too, of whether in certain cases of extra-hazardous activities, a subsidiary liability of the member States will have to be accepted as indispensible. Another special legal problem as regards the implementation procedure concerns the question of whether international organizations are entitled to, and whether they should, set up remedial procedures which have to be exhausted before a third party is allowed to bring a claim against the organization under international law. Does the law of State responsibility concerning the prior exhaustion of → local remedies apply here *mutatis mutandis*? What is the law to be applied for assessing → damages? To define the issue more generally: Is the current state of the law on the responsibility of international organizations to be perceived as being comprised of a series of lacunae in the law which are to be filled by reference to → general principles of law or by analogy with the law of State responsibility?

5. Evaluation

Faced with an increasing number of international organizations executing tasks with a highly injurious potential, the international legal order needs to define responsibilities clearly. The current legal situation reveals that the efforts at endowing international organizations with the status of international legal subjects which have a responsibility of their own provide for a generally acceptable balance of risk, but these efforts have only proved partially successful. The law on the responsibility of international organizations is still in a state of flux.

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INTERNATIONAL ORGANIZATIONS, SUCCESSION

Succession of international organizations is guided by the principle that international organizations are established to pursue common interests of their member States. To meet these States' lasting needs, the continuity of their pertinent functions must be ensured not only beyond the extinction of the inter-governmental body originally entrusted with these tasks, but also beyond changes in its other objectives, jurisdiction or institutional structure. The minute number and small import of exceptions confirm, rather than cast doubt on this rule, as experience shows that States' motives for divesting themselves of specific tasks and conferring them on such a body are generally unaffected by new circumstances and thus are largely permanent in character. The continued exercise of an organization's functions by a successor institution may be provided for in → treaties or other definitive arrangements of an equivalent nature, such as by intra-organizational law-making of the organizations involved. These agreements may be endorsed (as in the case of the succession by the → International Civil Aviation Organization to the International Technical Committee of Aerial Experts (1947) and the International Commission for Air Navigation (1948)), by the member States of the old body or bodies which have duly renounced the constituent instruments of the moribund institutions, or even before such renunciation by all the States concerned (as probably occurred in the devolution of the Office international d'hygiène public on the → World Health Organization (1950)). There is at least one instance of the assumption by an inter-governmental body – the World Tourism Organization (WTO: → Tourism) in 1970 – of functions that had been exercised by a private association under Swiss law, l'Union internationale des organismes de tourisme; this was done in accordance with a provision of the WTO Charter.

Conventional succession by means of treaties or international acts equivalent to treaties need not amount to the substitution of one entity for the other at once, but also permits the gradual devolution of the expiring organization's tasks. An example of this was the replacement of the → League of Nations by the → United Nations. The → United Nations Charter entered into force on October 24, 1945, whereas the dissolution of the League was completed only on April 18, 1946. This evolutionary process may also be traced in the transfer by the → Permanent Court of International Justice of its prerogatives to the → International Court of Justice at about the same time. Transition of an entity's functions may involve more than one successor, a major example being the winding-up of the United Nations Relief and Rehabilitation Administration (UNRRA: → United Nations Relief and Rehabilitation Activities) and the assignment of its respective activities in 1948 to the appropriate → United Nations Specialized Agencies, in particular to WHO, the → Food and Agriculture Organization of the United Nations and the → International Refugee Organisation (IRO).

Succession may also take place as between a moribund body and an already existing institution which, in addition to its own activities, is to continue those of the former; by its timing, such merger is distinct from substitution. While in the cases mentioned so far, the structure and functioning of the new organization were geared from the start to replace the outgoing entity, merger involves the subsequent adaptation of the organization involved, as in the transfer of the International Institute of Agriculture to FAO (1948), or in the take-over by the → United Nations Educational, Scientific and Cultural Organization of the International Institute of Intellectual Cooperation (1946/1956). Finally, certain powers may be transferred from one international body to another, both of which continue to exist (e.g. in the non-consummated transaction between the Office international d'hygiène public and UNRRA (1944)).

Substitution, merger and transfer all share a common basis, namely treaties or other equivalent international acts. Apart from the provisions regarding the devolution of the tasks which are to be preserved, their content varies from case to case, especially regarding succession to ancillary powers and obligations, including obligations owed to personnel (→ Civil Service, International) and other liabilities. Normally, however, these obligations are discharged by

arrangements between the entities concerned, mainly under provisions contained in the constituent treaty of the new organization (e.g. Art. XIX of the → European Space Agency Convention of May 30, 1975, concerning the affairs of its predecessors, the European Launcher Development Organization and the European Space Research Organization) or in documents emanating from both institutions at issue (e.g. the liquidation provisions of the European Payments Union Agreement and the corresponding provisions of the European Monetary Agreement of December 28, 1958, both administered by the Organization for European Economic Cooperation (OEEC) (→ Organisation for Economic Cooperation and Development (OECD); → European Monetary Cooperation).

Succession to assets does not necessarily entail assumption of liabilities (e.g. the UN did not assume the League's liabilities). Another case in point was the refusal of the Danube Commission (→ Danube), established in 1948, to take over the debts of its (functional) predecessor. The Western Powers, as a result, maintain that the Danube Convention of 1921 is still in force, and thus, in their view, the European Commission of the Danube together with the International Commission of the Danube are deemed to continue in existence.

The law of the moribund entity, including its internal law, e.g. its financial and budgetary rules, becomes extinct unless adopted by the successor. Usage suggests that the emergent body is likely to succeed, however, to its predecessor's international agreements (→ International Organizations, Treaty-Making Power), notably with third States. When concluded under the aegis of a defunct organization, inter-governmental instruments remain unaffected by its demise. This is borne out by the assumption of certain League activities by the UN, a transition governed by conventions with regard to some functions only, while the legal fate of others was left in abeyance. For the purposes of legal typology, the important aspect here is the succession, in the absence of conventions, between the two universal organizations. Sir Hersch Lauterpacht in his separate opinion in the South West Africa Hearings of Petitioners Advisory Opinion (→ South West Africa/Namibia (Advisory Opinions and Judgments)) stated that "the supervision by the United Nations of the [League] mandate for South West Africa constitutes the most important example of succession in international organization" (ICJ Reports 1956, p. 48). In line with Sir Hersch's statement, it is submitted that the UN's was a case of automatic succession in the sense that such assumption of functions was and remains necessary for the effective exercise of the UN's other functions (→ Effectiveness). The ample judicial and executive practice that carried on after the demise of the League would seem to confirm this conclusion rather than acknowledge the UN takeover as an instance of indirect succession by convention.

Amendments to the constituent text are used when the legal identity of the international institution remains the same, but there is a need to take account of new requirements or aspirations. These are usually those of the member States, but on occasion may be the needs or desires of others wishing to accede (for example, the United States and Canada before the reform of the OEEC and its continuation as the OECD (1960/1961)). Other major cases of constitutional adaption have been: the revision of the → International Labour Organisation Constitution by three successive series of amendments ensuing from the demise of the League or consequent upon the redefinition of the ILO's aims and purposes that occurred between 1944 and 1946; the extension of the Treaty of Brussels (March 17, 1948) to Germany and Italy and its transformation into the → Western European Union (1954/1955), the reform of the Union of American Republics into the → Organization of American States (1948); the replacement of certain initial structural features of the supranational → European Communities by institutions common to the three of them (1965).

A remaining category of adaptation is that which has no recourse to dissolution or constitutional changes. This takes the form of a relationship agreement, as was concluded between the UN and the → Universal Postal Union transforming the latter into a UN Specialized Agency. The same may be achieved by the establishment of new institutions, affiliates, and subsidiaries in accordance with existing legal instruments. This was the course adopted by the World Bank (→ International Bank for Reconstruction and

Development) when it set up the → International Development Association and the → International Finance Corporation.

Metamorphoses such as those described here have often brought about no less far-reaching and incisive changes in the aims and purposes of an international institution than those changes resulting from its extinction in conjunction with the assumption of its functions by a successor body. However, the maintenance of a given corporate entity as a rule entails the preservation of the staff, the financial status of the organization, and its assets and liabilities; if such preservation is not intended, provision has to be made. If this policy were not adopted, factual and legal disorder, accompanied in many cases by inequities, would result from the lack of continuity. It is true that continued organizational identity *ratione personae* in the wake of constitutional or administrative change does not necessarily ensure the desirable degree of predictability in fact, for example, as regards the status of the staff. Yet it facilitates some predictability, inasmuch as the maintenance of whatever legal relationships the organization has entered into is the rule, while their cessation is the exception for which express provision must be made. To that extent, indeed, "continuity is in itself an element of legal justice" (Lauterpacht, The Development of International Law by the International Court (1958) p. 293).

H. J. HAHN, Continuity in the Law of International Organization, Duke Law Journal (1962) 379–422, 522–557; repr. in Österreichische Zeitschrift für öffentliches Recht, Neue Folge, Vol. 13 (1963/1964) 167–239.

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INTERNATIONAL ORGANIZATIONS, TREATY-MAKING POWER

1. Theoretical Background

Since the proliferation of international organizations beginning at the end of World War II, more than 2000 → treaties to which international organizations are parties have been published in the United Nations Treaty Series. From a factual point of view there is, therefore, no doubt that international organizations have the capacity to conclude international agreements.

At the outset, however, that capacity was by no means legally certain since the constituent instruments of international organizations rarely confer such power expressly on the organization. Normally, treaty-making is either not dealt with at all or the organization is simply authorized to conclude a given agreement. In such cases the capacity of the organization to conclude treaties must be inferred, either from general international law or from the functions and powers of the organization (→ International Organizations, Implied Powers). Thus, the question is linked to the international legal personality of international organizations (→ International Organizations, General Aspects; → Subjects of International Law).

This basic problem found an early solution in the Advisory Opinion of the → International Court of Justice (ICJ) on → Reparation for Injuries Suffered in Service of UN (1949), which not only recognized the international legal personality of the → United Nations but stated further that "the Organization must be deemed to have those powers which, though not expressly provided . . ., are conferred upon it by necessary implication as being essential to the performance of its duties" (ICJ Reports 1949, p. 182).

The mainstream of legal thinking has since followed this line of reasoning for explaining the treaty-making capacity of international organizations. This capacity is considered as originating in the constituent instrument, through which the founding States, acting as law-creating organs of the → international legal community, establish a new legal person with rights and duties under international law. The treaty-making power of that person, if not expressly conferred upon it, is implied if it is essential to the performance of the organization's functions.

The weak point in this theory is its difficulty in explaining why non-member States should be under a duty to recognize a personality created by others (→ Recognition). The problem is particularly grave for organizations with limited membership (e.g. regional organizations) and has

hitherto been solved only pragmatically. An example is the Convention on International Liability for Damage Caused by Space Objects of March 29, 1972 (see section 2(a) *infra*; → Space and Space Law).

Another theory, which can claim only a limited following, tries to resolve the question by asserting that the treaty-making capacity of international organizations is founded in → customary international law. International organizations are, by virtue of their existence, objective persons of international law and have the inherent, not a delegated or implied, "capacity to perform all types of international acts which they are in a practical position to perform" (Seyersted).

It is, however, doubtful whether such a norm of customary international law can be proven. Only about 50 international organizations, less than one quarter of those listed in the Yearbook of International Organizations, have registered international agreements in the United Nations Treaty Series (→ Treaties, Registration and Publication). This does not prove that the remaining organizations consider themselves prevented from entering into international treaties, but it falls short of being a practice both "extensive and virtually uniform . . ., [having] occurred in such a way as to show a general recognition that a rule of law . . . is involved" (→ North Sea Continental Shelf Case, ICJ Reports 1969, p. 43).

Still a third position is taken within the Soviet doctrine of international law. For a long time the vast majority of Soviet writers flatly denied the treaty-making capacity of international organizations. Some still adhere to this position, while others have developed more realistic views (e.g. Lukashuk), though on a strictly constructionist basis, admitting capacity only when provision is made for it in the constituent instruments (→ Socialist Conceptions of International Law).

Doubt has been cast on the treaty-making capacity of international organizations from a different point of view by questioning the treaty character of agreements concluded by them. They are described as establishing a régime. "Once they are concluded their contractual aspect ceases to be of much relevance" (Parry). This observation derives from the assumption that only agreements of a contractual nature can properly be termed treaties, an assumption that is disproved by the practice of States. But even if the observation were valid, it would apply only to some of the agreements concluded by international organizations. In any case, this particular point has never been raised as a problem in practice.

2. *Current Legal Situation*

(a) *International practice*

International organizations have mostly concluded bilateral agreements. Some agreements which appear in multilateral form are really bipartite in nature, with several States or organizations appearing on one side (→ Treaties, Multilateral). Agreements with States serve either functional purposes (e.g. aid to → developing States) or institutional purposes (e.g. privileges and immunities, headquarters); those with other international organizations are nearly always concluded to establish a formal relationship.

Since no rules existed concerning the exercise of treaty-making power by international organizations, such rules developed pragmatically through the adaptation of the traditional law governing treaties to the circumstances and needs of international organizations. This development concerned two aspects in particular. Since the structure of international organizations differs fundamentally from the structure of States, internal procedures for the formulation and expression of the will of the organization to be bound by a treaty and to perform other acts in connection with it had to be invented (→ International Organizations, Internal Law and Rules). Correspondingly, the familiar international procedures of ratification etc. had to be adapted to the structure of organizations (→ Treaties, Conclusion and Entry into Force).

The participation of international organizations in multilateral conventions concluded between States raised more serious problems because of the divergence of views concerning the legal standing of the international organizations. Where their participation was considered essential, special devices were invented to indicate their unequal status. Thus Art. 90 of the → Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of March 14, 1975 provides

for "a decision [of the organization] to implement the relevant provisions of the Convention". In Art. XXII of the Convention on International Liability for Damage Caused by Space Objects, organizations which conduct space activities are invited to declare their "acceptance of the rights and obligations provided for in this Convention" on the condition that "the majority of States members of the organization are State parties to the Convention". It is obvious that this sort of provision makes it difficult for the organization to claim rights under the convention in question. A first step towards improving this situation is under debate in the United Nations Third Conference on the Law of the Sea (UNCLOS III), where normal participation of international organizations is contemplated, while the requirement of a majority of the members of the organization being parties to the proposed convention is maintained.

(*b*) *Codification*

When the → International Law Commission of the UN started the codification of the Law of Treaties (→ Vienna Convention on the Law of Treaties; → Codification of International Law), it originally intended to include the treaties of international organizations in its work. It was not until the final draft (1966) that the Commission definitely limited the scope to treaties among States. During the Vienna Conference on the Law of Treaties (1968–1969) several States tried, through amendments, to make the text applicable to international organizations, but it soon became clear that a conference of 103 States was unsuited to redrafting a complex text, and the amendments were withdrawn. The Conference instead recommended to the → United Nations General Assembly that the ILC be entrusted with the preparation of a separate draft on the law of treaties of international organizations.

The ILC was instructed accordingly and elected P. Reuter (France) as special rapporteur for the subject. The necessity of completing other drafts with higher priority delayed the work and it was only in 1980 that a first draft was completed. This, however, is subject to a second reading in the light of comments by States, to begin in 1982.

The draft does not expressly tackle the problem of the origin of the treaty-making power of international organizations. The divergence of views, mentioned above, would appear to be responsible for this. However, in stating that "the capacity of an international organization to conclude treaties is governed by the relevant rule of that organization", the ILC seems to have found the common denominator of the most widely held theory on the one hand and of Soviet doctrine on the other. At the same time, however, the ILC has broadened the point of reference by defining the "rules of the organization" as including "in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the organization", following therein the concept of implied powers as expressed by the ICJ in its 1949 Reparation for Injuries advisory opinion.

As to the technical rules, predictably only a few radical changes in or additions to the law of treaties applicable among States are proposed. The following may be mentioned: "ratification" is replaced by an "act of formal confirmation"; "powers" are required for all persons acting in connection with a treaty for an international organization; organizations whose participation in a treaty is essential to its object and purpose are prevented from formulating reservations other than those expressly authorized (→ Treaties, Reservations); members of the organization may acknowledge that they will observe the obligations or will exercise the rights arising from a treaty to which the organization is a party, if it is necessary for the application of the treaty; a violation of the rules of the organization in expressing its consent to be bound by a treaty is manifest "if it is or ought to be within the cognizance of any contracting State or any other contracting organization"; access to the ICJ in cases concerning → *jus cogens* is replaced, as far as international organizations are concerned, by the conciliation procedure set forth in the annex to the draft (→ Conciliation and Mediation).

Reports of the International Law Commission on the Work of its 26th session (UN Doc. A/9610/Rev. 1) YILC, 1974 II, Part 1, 290–299; 27th session (UN Doc. A/10010/Rev. 1) YILC, 1975 II, 169–183; 29th session (UN Doc. A/32/10) YILC, 1977 II, Part 2, 95–123; 30th session (UN Doc. A/33/10) YILC, 1978 II, Part 2, 123–137; 31st session (UN Doc. A/34/10) YILC, 1979 II, Part 2, 137–159; 32nd session (UN Doc. A/35/10) YILC, 1980 II, Part 2, 64–103.

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KARL ZEMANEK

INTERNATIONAL ORGANIZATIONS, VOTING RULES *see* Voting Rules in International Conferences and Organizations

INTERNATIONAL PARLIAMENTARY ASSEMBLIES *see* Parliamentary Assemblies, International

INTERNATIONAL PATENT INSTITUTE *see* European Patent Organisation; Industrial Property, International Protection

INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC WORKS *see* Literary and Artistic Works, International Protection

INTERNATIONAL PUBLIC HEALTH COOPERATION *see* Public Health, International Cooperation

INTERNATIONAL REFUGEE ORGANISATION

1. Historical Background and Establishment

After World War II had come to an end, the international community was faced with the problem of about eight to ten million displaced persons (usually referred to by the abbreviation "DPs") in Europe who had either been displaced by the Axis Powers or who had otherwise been forced to leave their homes due to the war events. In the course of 1945 the majority of these DPs were repatriated (→ Repatriation) while others resettled elsewhere.

By the beginning of 1946, when there were still about two million DPs left in Europe, it had become evident that a large number of them had valid reasons not to return to their countries of origin, either because of changed political conditions there or because they had lost all ties in these countries and wanted to start a new life elsewhere. In addition, new → refugees had started to arrive in the still war-devastated countries of Western Europe. This situation was aggravated by the impending closure of the then-existing intergovernmental bodies dealing with refugees and displaced persons, i.e. the League of Nations High Commissioner for Refugees (→ Refugees, League of Nations Office), the Intergovernmental Committee on Refugees (IGCR) and the United Nations Relief and Rehabilitation Agency (UNRRA; → United Nations Relief and Rehabilitation Activities).

The post-war problem of displaced persons and refugees, after having been raised during the session of the Preparatory Commission of the → United Nations in May 1945 at San Francisco, was placed on the agenda of the first part of the first session of the → United Nations General Assembly, which on February 12, 1946 adopted a resolution laying down the basic principles for the future work of the UN (GA Res. 8(I)). The resolution stressed, *inter alia*, that the problem of displaced persons and refugees was of "immediate urgency" and "international in scope and nature". It stipulated that no refugees or displaced persons who expressed valid objections should be compelled to return to their country of origin, and that the future of such refugees and displaced persons should become the concern of an international body within the framework of the UN.

The preparatory work conducted within the → United Nations Economic and Social Council resulted in a draft constitution providing for a non-permanent Specialized Agency (→ United Nations, Specialized Agencies) to be established

under Arts. 57 and 63 of the → United Nations Charter. The constitution for this body, the International Refugee Organisation (IRO), was finally adopted by the General Assembly on December 15, 1946 (Res. 62(I); UNTS, Vol. 18, p. 3).

The commencement of the IRO's activities was set for July 1, 1947, on which date the UNRRA and the IGCR would be wound up and their assets transferred to the new organization (→ International Organizations, Succession). However, before the constitution could come into force, 15 States had to ratify it, and a firm subscription of 75 per cent of the operational budget of the IRO had to be secured. Since these conditions were not likely to be met before July 1, 1947, the governments who were signatories to the constitution on December 15, 1946, signed an agreement on interim measures to be taken in respect of refugees and displaced persons which provided for the establishment of a preparatory commission of the IRO (UNTS, Vol. 18, p. 122). This commission performed its transnational functions until August 20, 1948, when the conditions for the entry into force of the IRO's Constitution were fulfilled. The IRO itself then carried out its functions in full until it was dissolved in February 1952. At its third (special) session in 1949 the IRO General Council had expressed the wish that the IRO activities should be terminated by June 30, 1950. In view of delays in establishing the successor organization (the United Nations High Commissioner for Refugees (→ Refugees, United Nations High Commissioner)), the IRO Council eventually agreed to extend that deadline until September 30, 1951 (Res. GC/78 of October 13, 1950). Liquidation finally occurred on February 28, 1952 (Res. GC/108).

2. *Structure and Components*

The IRO had its headquarters at Geneva and maintained 53 branch offices throughout the world. The organization was headed by a Director-General, nominated by its Executive Committee and elected by its General Council (→ International Organizations, General Aspects). The organization had three main departments dealing with refugees' problems: health, care and maintenance matters; repatriation and resettlement; and protection, mandate and reparations.

The staff was appointed by the Director-General in accordance with the principles enumerated in Art. 101(3) of the UN Charter. At the peak of its operations, the IRO had 2877 international civil servants (→ Civil Service, International).

According to its Constitution, membership in the IRO was in principle limited to member States of the UN. Non-member States could be admitted by decision of the Executive Committee, but no State except Switzerland made use of this possibility, and throughout the IRO's activities the actual membership of the organization was limited to the 18 signatory States (Australia, Belgium, Canada, the Republic of China, Denmark, the Dominican Republic, France, Guatemala, Iceland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Switzerland, the United Kingdom, the United States and Venezuela).

The IRO Constitution provided for the establishment of an Executive Committee, consisting of representatives of nine member States elected by the General Council. The Executive Committee was to advise the Director-General on the work of the organization. The General Council—the policy-making body of the organization—was composed of one representative each from all member States.

3. *Finances and Budget*

The IRO Constitution provided for separate budgets to be established for administration, for operational expenditure and for large-scale resettlement operations (cf. → International Organizations, Financing and Budgeting). For the administration and operational budgets, the Constitution provided in Annex II a list of UN member States, indicating for each country the percentage on which its contribution should be based. Large scale resettlement operations were to be financed through voluntary contributions.

For each fiscal year, the Director-General submitted a budget to the Executive Committee which forwarded it with its comments to the General Council for final decision. The administrative budget had to be submitted annually to the UN General Assembly.

The total expenditure of the IRO from July 1, 1947 to December 31, 1951 amounted to about $430 million, provided by 19 governments.

Nearly half of the expenditure was borne by the United States. But the countries where the displaced persons and refugees were living also disbursed considerable sums for their care and maintenance, particularly the three occupation zones of Western Germany, which had to bear the cost for the care and maintenance of millions of DPs/refugees as part of the occupation costs (→ Germany, Occupation after World War II).

4. *Activities*

(*a*) *Caseload*

When the IRO started its activities in 1947, the number of DPs/refugees to be taken care of was estimated at 1.6 million, of whom 720 000 were in camps and assembly centres, mainly in Germany and Austria, but also in the Middle and Far East. In addition, there were about 900 000 DPs/refugees not in immediate need of care and maintenance but registered with the IRO for legal and political protection as well as for assistance towards resettlement and, to a smaller extent, for repatriation.

(*b*) *Repatriation*

According to the IRO Constitution, its primary function consisted in "encouraging and assisting in every way possible the early return to their country of nationality ... of those persons who are the concern of the Organization" (Art. 2(1) (a)). In practice, however, and in spite of all the efforts to assist towards repatriation, only about 73 000 persons actually returned home under IRO auspices, including some 11 000 overseas Chinese who were moved back to their pre-war homes.

(*c*) *Resettlement*

For those whose repatriation was not feasible, the IRO was to facilitate their re-establishment in the countries of temporary residence, or their emigration, resettlement and re-establishment in other countries (Art. 2(1) (b)). Indeed, arranging resettlement in the form of → emigration proved to be the most important function of the IRO. During the whole period of the IRO's activities, a total of 1 039 000 persons were resettled, mainly going to the United States (329 000), Australia (182 000), → Israel (132 000), Canada (123 000) and to various Latin American countries (about 100 000). As for Europe, the main countries of resettlement were the United Kingdom (86 000), France (38 000) and Belgium (22 500).

(*d*) *Care and maintenance*

While awaiting decisions on their future residance, DPs/refugees had to be taken care of in camps and assembly centres. In the beginning, about two-thirds of the whole operational budget was spent for this purpose. Then the IRO increasingly turned its efforts to equipping refugees to resume life in a normal environment; vocational and language training was intensified and programmes for rehabilitation were provided.

(*e*) *Legal and political protection*

The IRO Constitution recognized "that genuine refugees and displaced persons ... should be protected in their rights and legitimate interests" and consequently be provided with "legal and political protection" by the Organisation. The activities of the IRO in this field comprised: clarification of national legal standards for the treatment of DPs/refugees through agreements with the governments concerned; the issuance and recognition of travel documents in accordance with the Intergovernmental Agreement on the Issue of a Travel Document to Refugees signed at London on October 15, 1946 (UNTS, Vol. 11, p. 84); the improvement of the status of → stateless persons and of measures to reduce statelessness; arrangements within the framework of the UN for the declaration of death of missing persons (Convention on the Declaration of Death of Missing Persons of April 6, 1950 (UNTS, Vol. 119, p. 122)); the promotion of the payment of compensation to victims of Nazi persecution; and, lastly, the direct protection of individuals, including providing them with legal aid before courts.

5. *Significance*

The activities of the IRO may be considered to be an outstanding landmark of international action through the UN on behalf of refugees and other uprooted persons. It was the first time that efforts had been made on a really world-wide basis – including the respective countries of origin – to promote a solution to the problems of refugees through repatriation or resettlement. Adequate procedures and operational techniques

were developed and standards were set to deal with large scale refugee and → migration movements (see also → Intergovernmental Committee for Migration). There was also for the first time an awareness by all States of the danger that such large groups of uprooted people may present to the reconstruction of the economic and social life of countries which, as was the case in post-war Europe, were themselves faced with enormous difficulties of all kinds. It was recognized that through concentrated and coordinated efforts of the international community, refugees need not necessarily remain a political, economic and social burden to their countries of asylum or resettlement but may, if properly assisted, eventually become an asset to them.

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INTERNATIONAL SECRETARIAT

1. Notion

The contempory international secretariat is distinguished by the international character of its duties and functions, its international composition and its permanency. The functions, rights, duties and composition of an international secretariat are determined by the constitutive instrument of the organization, the resolutions of the organization's governing or legislative organs, and the secretariat's internal rules and regulations. Members of an international secretariat are not civil servants of the country of which they are citizens, but only of the international organization which they serve (→ International Organizations, General Aspects). Even when seconded from national civil services, they belong to an international civil service, and their duties are exclusively international (→ Civil Service, International). Their salaries and other emoluments are paid by the organization which they serve and not by their national governments. While there are certain differences between the various international secretariats, depending on the goals of the organization and the secretariat's functions and composition, this article focuses primarily on the Secretariat of the → United Nations, the largest international secretariat and a model for many others.

Art. 100 of the → United Nations Charter defines the international character of the UN Secretariat and is a prototype for similar provisions in the constitutions of other organizations, especially of the Specialized Agencies (→ United Nations, Specialized Agencies). The → United Nations Secretary-General and the staff of the UN Secretariat may not seek or receive instructions from any authority external to the Organization. They are "international officials" responsible only to the UN Organization. Member States have the corresponding obligation to respect this exclusively international character of the UN Secretariat.

The contemporary international secretariat of an international organization must be distinguished from the traditional pattern of secretariats servicing international conferences (→ Congresses and Conferences, International). Such secretariats are composed of officials drawn from the countries participating in the conference and are multinational rather than international. The contemporary international secretariats are continuous and permanent; they perform diverse general functions. In certain organizations, such as the UN, the secretariats have not only administrative and technical functions, but also certain political and executive responsibilities which must, of course, be carried out in an impartial and neutral spirit.

An international secretariat is not, or at least should not be, organized on national or political lines. Its structure may be organized on the basis

of the organs of the organization, the functions which it must perform, geographical regions, or a mixture of such considerations. Secretariats of regional organizations are obviously organized on the basis of a number of different guiding principles, including bureaus composed of nationals of the participating regional members.

An international secretariat is headed by an executive head (secretary-general, director-general, etc.) to whom the members of the secretariat are responsible. It is the executive head who is constitutionally responsible to the other principal organs of the organization for carrying out the work and functions of the organization.

2. *Evolution*

Conference secretariats were one source of the development of international secretariats. Other precursors of the modern international secretariats were the small but permanent secretariats of the public international unions, e.g., the → Universal Postal Union (→ International Administrative Unions). Such secretariats performed purely technical functions and were not international in character; in some cases they were not even multinational (for example, all the officials of the UPU were Swiss citizens). The influence of such secretariats on future developments was therefore limited. The experience of the Pan-American Union was regional, not universal, and, moreover, appears not to have been well-known to the draftsmen of the Covenant of the → League of Nations. The more recent practice of inter-Allied war agencies (1917–1918) had a greater impact. The personnel of those agencies were national officials, who, while paid by their national governments, performed international duties. This influenced the suggestion that the staff of the Secretariat of the League of Nations should be organized along national lines, a suggestion which did not, however, prevail.

The goals of the League of Nations and of the → International Labour Organisation required for the operations of those Organizations large permanent secretariats, composed of officials of many nationalities performing a broad spectrum of functions. No provision of the Covenant of the League of Nations required that the League's Secretariat be international rather than multinational, or that the duties of the staff members be exclusively international, or that the staff members be subject only to the authority of the League's Secretary-General. It was the first Secretary-General of the League, Sir Eric Drummond, who, inspired by the British model of the career civil service, guided the League's Secretariat in the direction of an organ which would be international in composition and possess exclusively international obligations. The permanent Secretariat of the League was, however, to be a purely administrative organ. It would neither pass political judgments nor perform political functions. Nevertheless, the League's Secretariat had important powers in the areas of → negotiations and procedure and, as the permanent organ, it had the capability of dealing with emergencies.

While the UN Charter built on the principles established by the League with regard to the international composition and the international character of the Secretariat, it went beyond the precedent of the League by conferring important political functions on the UN Secretariat as a whole. Art. 98 of the Charter is significant in that it allows the UN Secretary-General to be entrusted by the other principal UN organs with the execution of other functions, including those of a political character. Even more importantly, Art. 99 confers on the Secretary-General the right to bring to the attention of the → United Nations Security Council matters which in his opinion may threaten international peace and security (→ Peace, Threat to). By necessary implication, this right is accompanied by broad discretion on his part to conduct inquiries and to engage in diplomatic contacts with regard to matters which may threaten international peace and security (→ United Nations, Peacekeeping System). These innovative provisions meant that officials might have to take stands on politically controversial issues. The deliberative organs of the UN have shown a willingness to utilize these provisions by giving delicate political tasks to the head of the UN Secretariat. This tendency has been paralleled, although not always on the same scale, by developments in the Specialized Agencies and related organizations.

The concept of a UN Secretariat independent of governments and possessing important executive functions, a concept developed primarily by

UN Secretary-General Dag Hammarskjöld, was challenged by the Soviet Union and in particular by Nikita Khruschev. In the years 1960–1961, the Soviet Union pressed for the introduction of a "troika", a Secretariat composed equally of representatives of socialist, capitalist and neutral States, and of a collective executive body, constituted along the same lines, which would replace a single Secretary-General. The "troika" system was not acceptable to the majority of the member States of the UN, which feared the Secretariat's international character and effectiveness would be damaged.

3. Current Legal Situation

The UN Charter provides for a Secretariat comprising "a Secretary-General and such staff as the Organization may require" (Art. 97). The Secretariat is one of the principal UN organs (Art. 7). The Charter further provides that the Secretary-General shall be appointed by the → United Nations General Assembly on the recommendation of the Security Council (Art. 97) and that "[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly" (Art. 101).

The Secretary-General is given a wide range of functions under the Charter, including those of chief administrative officer (Art. 97), secretary of the General Assembly and of the three Councils, and "such other functions as are entrusted to him by these organs" (Art. 98); he is responsible for submitting an annual report to the General Assembly on the work of the Organization (Art. 98); and he may bring to the attention of the Security Council "any matter which in his opinion may threaten the maintenance of international peace and security" (Art. 99).

The Preparatory Commission of the United Nations in its report grouped the principal functions assigned to the Secretary-General by the Charter, explicitly or by inference, under these headings: general administrative and executive functions; the organization and administration of the International Secretariat; political functions; and representational functions. The Commission observed that many of these duties would naturally be delegated, in greater or lesser degree, to members of the Secretary-General's staff and particularly to the higher-ranking officials. But the execution of these duties had to be subject to his supervision and control; the ultimate responsibility would remain his alone.

The functions of the Secretariat as a whole must be considered jointly with those of the Secretary-General, who is its executive head. In recent years there have been growing challenges to the concept of an integrated UN Secretariat and a tendency towards decentralization, autonomy of various major departments and an increase in the authority of departmental heads. The Secretary-General's power of appointment of certain departmental heads has, in a number of cases, been subordinated to confirmation by another organ or to consultations with organs and with States. The UN Secretariat and the secretariats of other major inter-governmental organizations have been subjected to strains as the result of changes in the international environment, in the growth and composition of their membership, and in the demands that have been placed upon them. The UN Secretariat, for example, has performed an important role in the process of → decolonization. It has had to implement delicate resolutions and policies in the areas of peace and security (→ Collective Security). The activities of the Secretariat have been increasingly focused on the area of the economic and social development of the economically less developed countries (→ Developing States). With the increase in the number of members, the processes of recruitment and promotion of staff members of the Secretariat have been subjected to numerous political pressures. Increasing ideological and cultural heterogeneity in the Organization have caused difficulties in the conceptualization and operation of the Secretariat.

4. Special Legal Problems

(a) Immunity and functional protection

Under Art. 105 of the UN Charter, which is a prototype of similar provisions in the constitutions of the specialized and related agencies, the Organization (including, of course, the Secretariat) enjoys in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes (→ International Organizations, Privileges and

Immunities). The Preparatory Commission of the United Nations explained that an adequate system of immunities, as provided in Art. 105 of the Charter, is essential if officials are to be free from pressure exerted by individual governments and able to discharge their duties efficiently. Detailed provisions regarding immunities and privileges have been established by various relationship and headquarters agreements between particular organizations and their host governments as well as through multilateral conventions. (For further details see → Civil Service, International; → International Organizations, Headquarters). In view of the difficulties which have arisen with regard to respect for immunity of international civil servants and the right of the UN and the Specialized Agencies to afford functional protection to those international civil servants who have been placed under arrest or detention, the UN General Assembly in Resolution 36/232 (1981) made a special appeal to member States to respect the rights of international civil servants and executive heads in accordance with the relevant multilateral conventions and bilateral agreements.

(*b*) *Interference by States; politicization; personnel*

The principal difficulties now faced by the secretariats of the UN and of the specialized and related agencies are: the increased politicization of recruitment and promotion processes; governmental interference with the power of the executive heads under Art. 101 of the Charter and similar provisions elsewhere to appoint and to promote officials; and violations by States of the international character of the secretariats, enunciated in Art. 100 of the Charter and similar provisions.

5. Evaluation

On the whole, the secretariats of the major international organizations have satisfactorily performed the functions which have been conferred on them by their principal organs and by member States. In view of the growing politicization of the appointment and promotion systems and increasing interference by States with the principle of the independence of the secretariats, it appears that the principle of merit in the selection of the staff has been relegated to a secondary role in relation to the principle of geographical distribution, i.e. nationality. Efficiency appears to have declined concurrently. International secretariats are in a period of crisis. Yet their neutrality, objectivity and effectiveness are essential for the operation and, indeed, the survival of international organizations.

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INTERNATIONAL TELECOMMUNICATION UNION

A. Background and Legal Instruments

The invention of the electric telegraph in 1835 can certainly be considered as the decisive milestone in mankind's search for better and quicker ways of communication. Since its availability to the general public in the United States and Europe shortly before the beginning of the second half of the 19th century, States realized the need to regulate by way of inter-governmental agreements the various aspects of this new type of telecommunication. This need was first met in Europe by the conclusion of bilateral and multilateral conventions and agreements and the creation of regional unions during the period from 1849 to 1859.

At the initiative of France, a Conference in

which 20 States of Europe participated met in Paris on March 1, 1865 to negotiate a general → treaty and concluded its work on May 17, 1865 with the adoption and signature of the first International Telegraph Convention (CTS, Vol. 130, p. 198), by which the International Telegraph Union was founded as the first international organization of universal character (→ International Organizations, General Aspects; → International Administrative Unions).

The next Conference in Vienna took a decision of utmost importance for the history of international organizations, in general, by establishing in 1868 the Bureau of the Union, with a permanent Secretariat of originally three staff members and its seat in Berne where it remained, under the control of the Swiss Government, until 1947. The Union's St. Petersburg Conference of 1875 adopted a new Convention which remained in force until 1932.

After the invention of the telephone (1876) and of the radio (1895/1896), the Union's legislative activities expanded rapidly. Through its Administrative Conferences in Berlin (1885, 1903 and 1906) and in London (1912), the Union adopted and constantly improved the International Telephony and Radio Regulations. The International Telephone Consultative Committee (CCIF) and the International Telegraph Consultative Committee (CCIT), created as independent organizations in 1924 and 1925 respectively, joined the Union in 1932. The Washington Radio Conference of 1927, with the participation of as many as 80 States, established the International Radio Consultative Committee (CCIR) and for the first time allocated bands of radio frequencies for the various radio services.

At its 1932 Madrid Conferences, the Organization changed to its present name: International Telecommunication Union (ITU), adopted the International Telecommunication Convention and new Radio, Telegraph and Telephone Regulations; the latter regulations were all amended by the 1938 Administrative Conferences in Cairo.

The Plenipotentiary and Radio Conferences of 1947 in Atlantic City laid down the basic elements of the ITU's present structure in a new International Telecommunication Convention, created the International Frequency Registration Board (IFRB) and provided for the establishment of a new international frequency list. By virtue of an agreement with the → United Nations, which entered into force on January 1, 1949, the ITU became a → United Nations Specialized Agency. In 1948, its seat was transferred from Berne to Geneva where, in 1956, the CCIF and the CCIT were merged to the new International Telegraph and Telephone Consultative Committee (CCITT).

The subsequent Plenipotentiary Conferences (1952 in Buenos Aires, Argentina; 1959 in Geneva, Switzerland; 1965 in Montreux, Switzerland; and, finally, 1973 in Malaga-Torremolinos, Spain) revised the International Telecommunication Convention, which as adopted in 1973 at Malaga-Torremolinos entered into force on January 1, 1975 and is at present the basic legal instrument of the ITU (hereinafter referred to as "the Convention").

The provisions of the Convention are complemented by Administrative Regulations which are considered as Annexes to the Convention and deal with the use of telecommunications; they are binding on all members of the ITU. These regulations are at present the Telegraph Regulations and the Telephone Regulations (as adopted in 1973 by the Geneva World Administrative Telegraph and Telephone Conference) and the Radio Regulations. The latter as adopted in 1959 had already been partially revised over the years by various World Administrative Radio Conferences, in order to adjust them to the new developments in the field of radiocommunications (concerning the aeronautical, maritime mobile, satellite and broadcasting services) and, in particular, to meet the new demands emanating from man's exploration of outer space which depends on telecommunications. They were generally restructured and revised by the 1979 Geneva World Administrative Radio Conference and entered into force on January 1, 1982.

In addition to the Convention and the Administrative Regulations, there are a considerable number of regional and special conventions, agreements and arrangements concluded under the auspices of the ITU, which concern specific types of telecommunication services, such as the planning of the broadcasting service. (→ Broadcasting, International Regulation; → Intelsat; → Inmarsat; → Outer Space Treaty).

B. Purposes; Structure; Organs

Whereas the sovereign right of each country to regulate its own telecommunication is fully recognized (→ Sovereignty), the Convention's object is to facilitate relations and cooperation between the peoples by means of efficient telecommunication services (Preamble to the Convention). It consists of a first part containing the "basic provisions" (Arts. 1 to 52) and a second part containing the "general regulations" (Arts. 53 to 82, which include general provisions regarding conferences (Arts. 60 to 67) and in Art. 77 the Rules of Procedure of conferences and other meetings); in case of inconsistency the basic provisions prevail over the general regulations.

1. Purposes and Principles

The purposes of the Union are to maintain and extend international cooperation for the improvement and rational use of telecommunications of all kind, to promote the development of technical facilities and their most efficient operation by improving the services, increasing their usefulness and making them, so far as possible, generally available to the public, and to harmonize the action of nations in the attainment of those ends (Art. 4).

The "basic provisions" contain, in Arts. 18 to 32 of the Convention, general provisions relating to all telecommunications. They include, with conditions set forth therein, such principles and fundamental issues as, *inter alia*, the right of the public to use the international telecommunication service (Art. 18), the secrecy (Art. 22) and stoppage (Art. 19) of telecommunications (→ Communication and Information, Freedom of), the suspension of services (Art. 20), the priority of certain telecommunications (Arts. 25 and 26), the use of secret language (Art. 27), the rendering and settlement of accounts (Art. 29), the monetary unit (Art. 30) and the rights reserved by members as to special arrangements not concerning all members (Art. 31), and as to regional conferences, arrangements and organizations on matters susceptible of being treated on a regional basis and without conflict with the Convention's provisions (Art. 32). They are complemented by special provisions for radio (Arts. 33 to 38) dealing, *inter alia*, with the rational use of the frequency spectrum and of the geostationary satellite orbit (Art. 33), intercommunication (Art. 34), harmful interference (Art. 35) and distress calls and messages (Art. 36) (→ Ships in Distress). Arts. 41 to 50 contain provisions concerning the application of the Convention and the Regulations. Art. 51 deals with the meaning of certain basic definitions contained in Annex 2 to the Convention. The principles governing the relations with the UN and with other international organizations are laid down in Art. 39 (see also Annex 3 to the Convention containing the Agreement between the ITU and the UN) and in Art. 40 respectively. Disputes between members relating to the interpretation or application of the Convention or the Administrative Regulations are to be settled in the first place by any method mutually agreed upon, and only failing such settlement may be submitted to arbitration (Art. 50) (→ Arbitration Clause in Treaties), as provided for in Art. 81 or in the Optional Additional Protocol to the Convention on Compulsory Settlement of Disputes.

2. Structure and Functioning

(a) Composition and membership

With its 117 years of existence as of 1982 the oldest of the international organizations now forming part of the UN system, the ITU is at present composed of 157 member countries. Having abolished in 1973 the status of associate membership, the organization's members are sovereign countries (→ States) having met the conditions laid down in Art. 1 (see also Annex 1 to the Convention). The requirements for membership are adherence to the Convention and, for a country not a member State of the UN, approval of its application for membership by two-thirds of the ITU's members. Each member is, with one vote, entitled to participate in the ITU's conferences, meetings and consultations and has the rights and obligations provided for in the Convention (Art. 2). The Convention, not containing any provision for the exclusion of a member from the ITU, provides, however, that a signatory government, not having deposited an instrument of ratification of the Convention within the period of two years from the date of entry into force of the Convention, shall lose its right to

vote – its other rights remaining unaffected – until it has deposited such an instrument.

(*b*) *Plenipotentiary Conference*

The Plenipotentiary Conference (Arts. 6 and 53), the supreme organ of the Union (Art. 5), is to be convened at regular intervals, normally every five years (Art. 53, but see also section A *supra*), and exercises the powers conferred to it by Art. 6, *inter alia*, determining the general policies for the ITU, revising the Convention if considered necessary, as has been traditionally done at each Plenipotentiary Conference, establishing the basis for ITU's budget and electing the members of the Administrative Council, the Secretary-General, the Deputy Secretary-General and the members of the IFRC.

(*c*) *Administrative conferences*

The administrative conferences (Arts. 7 and 54) comprise two categories. World administrative conferences are convened to consider the partial or complete revision of one or more of the Administrative Regulations (see section A *supra*) and questions of a worldwide character within the competence of the conference concerned. Regional administrative conferences are convened to consider only specific telecommunication questions of a regional nature. It is worth noting that the agenda of any such conference is not established by the conference itself, but by the Administrative Council with the concurrence of a majority of, respectively, the members of the Union or the members belonging to the region concerned.

(*d*) *Administrative Council*

The Administrative Council (Arts. 8 and 55) acts, in the interval between Plenipotentiary Conferences, as mandatory on behalf of the Plenipotentiary Conference within the limits of the powers delegated to it by the latter, to which it has to report and in accordance with the functions entrusted to it by the Convention. Being at present composed of 36 members of the Union elected by the Plenipotentiary Conference with due regard to the equitable distribution of seats among all regions of the world, the Administrative Council holds its annual sessions at the seat of the Union – Geneva (Art. 3), in order to direct, under its own rules of procedure, the current affairs of the ITU. It, *inter alia*, reviews and approves the ITU's annual budget, decides on the number and grading of the ITU staff and related personnel and salary matters, promotes international cooperation for the provision of technical cooperation to the developing countries, ensures the efficient coordination of the work of the ITU and exercises financial control over the latter's permanent organs (General Secretariat, IFRB, CCIR and CCITT).

(*e*) *General Secretariat*

The General Secretariat (Arts. 9 and 56), consisting of six Departments (Personnel, Finance, Conferences and Common Services, Computer, External Relations and Technical Cooperation) and related services, is directed by the Secretary-General, assisted by a Deputy Secretary-General, both being elected by the Plenipotentiary Conference. The Secretary-General, being the legal representative of the ITU, carries out the specific functions entrusted to him, including legal advice to be provided to the ITU organs, ensures the economic use of the ITU's resources, and is responsible to the Administrative Council for all the administrative and financial aspects of ITU's activities. The Deputy Secretary-General undertakes such specific tasks as entrusted to him by the Secretary-General to whom he is responsible and whose duties he performs in the latter's absence. Amongst the various activities of the General Secretariat, the intensive technical cooperation activities are constantly expanding (with e.g. 727 expert missions and 700 scholarships in 1981). They concern mainly three areas: promotion of development of regional telecommunication networks; strengthening of national technical and administrative services in developing countries (→ Economic and Technical Aid); and development of human resources for telecommunications. They are mainly financed with resources from the → United Nations Development Programme, but also more and more through funds-in-trust agreements between the ITU and the interested governments. The Coordination Committee (Arts. 12 and 59) composed of the Deputy Secretary-General, the Directors of the CCIR and the CCITT, and the Chairman of the IFRB, and presided over by the Secretary-General during its at least monthly

meetings, assists and advises the Secretary-General on all administrative, financial and technical cooperation matters affecting more than one permanent organ, and on external relations and public information; it also examines important matters referred to it by the Administrative Council and reports to the latter through the Secretary-General.

(f) International Frequency Registration Board

The IFRB (Arts. 10 and 57) consists of five independent members elected by the Plenipotentiary Conference who serve not representing their respective countries or regions, but rather as "custodians of an international public trust". The IFRB essentially effects an orderly recording of frequency assignments made, and of positions assigned to geostationary satellites, by the different countries so as to establish the date, purpose and technical characteristics of each of these assignments, with a view to ensuring formal international recognition thereof (→ Satellites in Space). It also provides advice to members on the operation of the maximum practicable number of radio channels in those portions of the spectrum where harmful interference may occur. The Radio Regulations form the basis of the work of the IFRB. Its members elect for a period of one year, from their own ranks, a Chairman and a Vice-Chairman who succeeds the Chairman each year, with the election of a new Vice-Chairman. They must neither request nor receive instructions from governments or from any public or private organization or person. Each member of the ITU must respect the IFRB's international character and refrain from any attempt to influence members of the IFRB in the exercise of their duties. The IFRB is assisted by a specialized secretariat.

(g) International Consultative Committees

The CCIR studies technical and operating questions relating specifically to radiocommunication and issues recommendations thereon. The CCITT studies technical, operating and tariff questions relating to telegraphy and telephony and issues recommendations thereon. Both of these International Consultative Committees are composed of the administrations of all members of the ITU (members of right) and of any recognized private operating agency which, with the approval of the member which has recognized it, expresses a desire to participate in their work. Each International Consultative Committee works through its Plenary Assembly, generally meeting every three years, its study groups set up by the Plenary Assembly to examine the questions attributed to them, its Director, elected by the Plenary Assembly, who is assisted by a specialized secretariat, and through its laboratories and technical installations set up by the ITU (Arts. 11 and 58). The "General Regulations" forming the Convention's second part contain in its Arts. 68 to 76 a set of general provisions regarding the activities, functioning and procedure of both International Consultative Committees. In meetings of the study groups of the International Consultative Committees, scientific and industrial organizations engaged in the study of telecommunication problems or in the design or manufacture of equipment intended for telecommunication services may also be admitted to participate in an advisory capacity, provided that their participation has received approval of the administrations of the countries concerned (Art. 68). Both International Consultative Committees collaborate also with the World Plan Committee and the Regional Plan Committees (Art. 11) in charge of developing a General Plan for the international telecommunication network to facilitate coordinated development of international telecommunication services. The latter Committees refer to the International Consultative Committees for study questions of particular interest to developing countries.

(h) Finances and personnel

The finances of the ITU (Arts. 15 and 79 and the ITU's Financial Regulations adopted by the Administrative Council) require special attention. The ITU expenses, comprising the costs of the Administrative Council, the permanent organs, the Plenipotentiary Conference and the world administrative conferences, are met from the contributions of ITU members, each member paying a sum proportional to the number of units in the class of contribution it has freely chosen from a scale running from a thirty unit class to half a unit class. Members are to pay in advance their annual contributory shares, calculated on the basis of the annual budget approved by the Administrative Council which has to take account of

the expenditure limits set by the Plenipotentiary Conference. These limits are contained in Additional Protocol I on "Expenses of the Union for the Period 1974 to 1979" adopted by the Plenipotentiary Conference, Malaga-Torremolinos, 1973. Therein, the Plenipotentiary Conference has laid down for each year the upper ceiling amount, which the Council may not exceed when drawing up the respective annual budget, and has also made provisions with regard to the years after 1979. If the limits prove insufficient to ensure the efficient operation of the ITU, the Administrative Council may exceed them only with the approval of a majority of the ITU's members after they have been duly consulted through the presentation of a full statement of facts justifying this step. As to the 1982 budget amounting to 77 965 000 Swiss francs, the Administrative Council in 1981 in fact took this step which was approved by the majority of the ITU members. A special system provides also for the contributions from recognized private operating agencies and scientific or industrial organizations in defraying the expenses of the International Consultative Committees (Art. 79). As in the case of non-ratification of the Convention, a member which is in arrears in its payments to the ITU loses its right to vote for so long as the amount of its arrears equals or exceeds the amount of contribution due from it for the preceding two years (Art. 15).

With regard to ITU personnel, the basic provisions contained in Art. 13, concerning both elected officials and the other staff, are *mutatis mutandis* drawn up in line with Arts. 100 and 101 of the → United Nations Charter, including as paramount consideration in the recruitment of staff the necessity of securing the highest standards of efficiency, competence and integrity, with due regard to be paid to the importance of recruiting the staff on as wide a geographical basis as possible (→ Civil Service, International). Since 1960 the ITU has aligned itself with the UN common system of conditions of employment and salaries and now participates actively in the work of the pertinent UN common system bodies and the International Civil Service Commission. The monthly total average for 1981 was about 875 staff members in Geneva. In addition thereto, the monthly total average of technical cooperation personnel in the field for 1981 was about 270 staff members.

C. Conclusion and Outlook

Taking into account the ITU's past and present activities, it can fairly be concluded that the ITU has been and still is an organization of an essentially and predominantly regulatory and standards-setting character, in spite of the remarkable increase in its operational technical cooperation activities over the last two decades. It can further be stated that the ITU indeed fulfils its purposes through the efficient work of the General Secretariat and the specialized secretariats of its other permanent organs and with the considerable and constant input from the public and private sectors of its member countries at various levels. As a service-oriented organization, it has on a permanent basis an enormous output of service documents that are used all over the world, for instance, by ships or coast-guard stations and on board aircraft. It can hardly be imagined how ITU's members and the general public as a whole could live and function in the telecommunication sector without this organization's work and services which are of direct and indispensable utility to them. It can be taken for granted that the ITU's regulatory functions will not only persist, but will even be enlarged and strengthened in view of the breath-takingly rapid and constantly expanding development of all types of telecommunication services and of international telecommunication networks which calls for standardization and harmonized, if not uniform, regulation by the ITU for the benefit of all concerned. But it can also be expected that the ITU's operational activities, in particular in the field of technical assistance to the developing countries, will expand even more in the future, in view of the important and increasingly emphasized role of telecommunications for improving the social and economic conditions of life in those countries.

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ALFONS NOLL

INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION *see* Intelsat

INTERNATIONAL TRADE CENTRE UNCTAD/GATT

1. Background

The International Trade Centre (ITC) was established in Geneva on the basis of a decision of the contracting parties to the → General Agreement on Tariffs and Trade on March 19, 1964 as part of GATT's programme to expand the trade of → developing States. The ITC began operating in May of that year as a division of GATT with the functions of providing developing countries with information on export markets and marketing, and helping them to develop the export promotion services and in the training of the personnel required for these services.

In the latter part of 1967 the Secretary-General of the → United Nations Conference on Trade and Development and the Director-General of GATT recommended that ITC become a semi-autonomous institution under the joint sponsorship of GATT and the → United Nations (the latter operating through UNCTAD) to avoid duplication in export promotion efforts for developing countries. This proposal was approved by the contracting parties to the GATT, the Trade and Development Board of UNCTAD and the → United Nations General Assembly (UN GA Res. 2297 (XXII) of December 12, 1967) and took effect on January 1, 1968. Under the terms of the joint sponsorship, the ITC's mandate remained basically the same as before, with the additional task of providing personnel and substantive support for export promotion projects financed under UN technical cooperation programmes.

The ITC's new legal status was formally recognized in 1974 as that of a "joint subsidiary organ" of GATT and the UN, the latter acting through UNCTAD (UN Doc. A/C.5/1604 of September 16, 1974). At the same time, the ITC's authority to accept and use voluntary contributions from governments ("trust funds") and to appoint and administer project staff paid from trust funds was confirmed. The ITC thus has a unique legal position within the UN system, as it is the only institution that is responsible to two separate organizations.

In recognition of the ITC's central role in trade promotion for developing countries, the → United Nations Economic and Social Council in 1973 designated the ITC as the focal point in the UN system for all technical cooperation activities in trade promotion (ECOSOC Res. 1819 (LV) of August 9, 1973). This designation has served as the basis for channelling UN assistance in trade promotion through the ITC.

2. Structure

Because of its status as a joint subsidiary organ of GATT and the UN, through UNCTAD, the ITC does not have a membership of its own, nor does it have its own governing body. However, its *de facto* membership is the member countries of UNCTAD and of GATT, whose representatives are invited to attend the meetings of the ITC's annual inter-governmental advisory bodies, the Technical Committee and the Joint Advisory Group on the International Trade Centre UNCTAD/GATT (JAG). Although these two organs have neither legislative nor budgetary authority, the JAG has *de facto* become the main inter-governmental policy organ of the ITC, with the governing bodies of GATT and UNCTAD generally adopting its recommendations. The Technical Committee, a subsidiary of the JAG composed of government experts in trade promotion, makes

recommendations on the ITC's future work programme and general policy guidelines to the JAG, which in turn makes proposals on these matters to the Council of GATT and the Trade and Development Board of UNCTAD.

The ITC's overall budget has two separate components. Its regular budget, used to finance the organization's headquarters operations, is contributed equally by GATT and the UN. The proposals for the ITC's regular budget are approved by the budgetary organs of GATT and the UN (→ International Organizations, Financing and Budgeting). The other part of the budget covers the ITC's operational activities, or its technical cooperation programme in the field (→ International Law of Development). Presently about a quarter of this amount comes from the → United Nations Development Programme (UNDP). The remainder consists of voluntary contributions by national governments as "trust funds" and, in a few cases, "funds-in-trust" (the latter when developing countries contribute money for projects in their own country).

The ITC is headed by an Executive Director, who is appointed jointly by the Director-General of GATT and the Secretary-General of UNCTAD. Other ITC staff are recruited by the ITC, but the appointment and promotion of professional staff is subject to the approval of GATT and UNCTAD.

3. Activities

The ITC's technical cooperation projects with developing countries in trade promotion take several forms: integrated country projects covering a mixture of trade promotion activities, carried out over several years; shorter-term projects on the national level dealing with one aspect of trade promotion; and interregional trade promotion projects of either short- or medium-term duration (→ World Trade, Principles).

These projects, undertaken jointly with the government(s) concerned, involve one or more of the following types of activities: setting up and improving national trade promotion institutions and services, drawing up national trade promotion strategies, finding market opportunities for the country's exports and using effective marketing techniques to promote them abroad, developing new export products, promoting primary commodities on the world market through multinational promotional arrangements, organizing training programmes, and improving import operations and techniques (→ Commodities, International Regulation of Production and Trade). Special areas of emphasis include helping chambers of commerce and similar organizations to develop their trade promotion services, supporting export-oriented rural development, assisting the least developed countries to improve their trade performance, promoting trade between developing countries and the socialist countries of Eastern Europe, stimulating economic and technical cooperation among developing countries and reinforcing the trade promotion role of State trading organizations (→ International Economic Order).

In addition to field projects ITC carries out headquarters-based activities that benefit all developing countries. These include research on trade promotion techniques and market opportunities; special export services, such as those related to export packaging, export financing, trade fairs and commercial publicity, costing and pricing, and quality control; the publication of handbooks, market surveys, training packs, monographs and a quarterly trade promotion magazine; provision of trade documentation and statistical services; and the supply of market information on request.

4. Special Legal Problems

The ITC's status as a subsidiary of two separate organizations has raised a number of interesting legal questions in the administrative sphere over the years. Its parent organizations have gradually enlarged the ITC's administrative autonomy in such areas as personnel matters (→ Civil Service, International) and financial services, while maintaining their final authority in overall budgetary and policy questions.

Whether the ITC should have executing agency status *vis-à-vis* the UNDP has been raised in recent JAG meetings, since the ITC carries out a considerable number of UNDP-financed trade promotion projects. At the present time, the ITC manages such projects, while UNCTAD is the formal executing agency for them. This question is still under consideration.

5. Evaluation

The ITC has grown from a small organization with 5 staff members in 1964 into a 230-member secretariat in 1981, with approximately 600 experts posted in its field projects annually. This expansion in the size and scope of its programme is a reflection of developing countries' growing recognition of the importance of national trade promotion programmes for economic growth. The ITC's role is expected to expand further in the future as trade promotion becomes a priority in national development programmes.

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GÖRAN M. ENGBLOM

INTER-PARLIAMENTARY UNION

1. Establishment and Purpose

The Inter-Parliamentary Union is a voluntary association of groups of parliamentarians from the parliaments of sovereign States from all parts of the world. It was founded in 1889 in Paris by the Englishman Randal Cremer and the Frenchman Frédéric Passy in order to strengthen awareness of the need for international cooperation and, through the influence exerted by the parliamentarians on their governments, to ensure the → peaceful settlement of disputes. The "Inter-Parliamentary Conference for International Arbitration" ("Inter-Parliamentary Union" since 1899) was thus the first intercontinental body for the settlement of disputes among States. Its purposes today are: to promote personal contacts between members of all parliaments, to unite them in common action to secure and maintain the full participation of their respective States in the establishment and development of strong representative institutions, and to advance international peace and cooperation, particularly by supporting the objectives of the → United Nations (→ Peace, Proposals for the Preservation of). At present, parliamentarians from over 90 countries from all continents belong to the Union. Since 1921 its headquarters has been in Geneva.

2. Structure

(a) Membership

The structure and functions of the Union are laid down in statutes adopted in 1922 and last amended in 1976, as well as in the rules of its organs that are adopted by its Conference.

Members of the Inter-Parliamentary Union are not States, governments or individual members of Parliament, but "national groups" (with a membership transcending party divisions), which can be set up by the members of any parliament which functions in the territory of a sovereign State and represents its population. Where a federal State is concerned a national group can only be established from members of the federal parliament. It is also possible for a parliament as a whole to constitute itself as a national group.

(b) Organs and decision-making

The organs of the Inter-Parliamentary Union are: the Inter-Parliamentary Council, the Inter-Parliamentary Conference, the Executive Committee and the Secretariat.

The most important steering organ of the Union is the Inter-Parliamentary Council. It determines and guides the activities of the Union. It is composed of two members designated by each national group. Their term of office lasts from one Conference to the next.

The Council decides the place and date of the Conference, establishes its agenda, proposes its president, prepares draft resolutions and sets the number and terms of reference of its study committees. The Council decides on the admission of national groups, as well as on the suspension of their affiliation when a parliament has ceased to function or when the administrative and financial relations which a national group should regularly maintain with the Union have ceased. The Council appoints the Secretary-General of the Union and proposes members for the Executive Committee. The Council adopts the annual work programme and budget of the Union and establishes the scale of the annual contributions payable by each national group to the expenses of the Union.

The Inter-Parliamentary Conference is composed of members of parliaments designated as delegates by their national groups. The number of delegates depends on the population of the coun-

try concerned and the size of the national group. The Conference debates international issues which fall within the scope of the Inter-Parliamentary Union, and makes recommendations expressing the views of the organization. As a rule, the Conference meets once a year and only debates items placed on its agenda by the Council. A supplementary item is placed on the agenda only if the Conference so decides by a two-thirds majority.

The Conference is assisted in its work by study committees which prepare draft resolutions and reports for submission to the Conference and, in urgent cases, to the Council. Each national group may delegate one voting member and one member in an advisory capacity to the study committees.

The Executive Committee is the administrative organ of the Inter-Parliamentary Union. It is composed of eleven members belonging to different national groups; ten of them are elected by the Conference from among the members of the Inter-Parliamentary Council. The President of the Council is *ex officio* a member and the President of the Executive Committee. The term of office of members other than the President is four years. At least two of the members retire in rotation each year and are replaced by a member belonging to another national group.

The Secretariat executes the decisions of the Conference and the Council and co-ordinates the Union's relations with national groups. It produces the documents and materials for the Union's meetings and conferences. The "Inter-Parliamentary Bulletin" is a quarterly publication in English and French (the Union's official working languages) with contributions relating to the activities of the Union and the national groups. The Secretariat is headed by the Secretary-General who may not himself be a member of parliament.

3. Activities

As a rule, the Conference meets once a year upon the invitation of a national group in that group's parliamentary building. The preparations for meetings are made by the Council and the Committees at a preceding annual spring meeting. The debates focus on the topical issues of international politics; over the last few years these have included problems concerning the Middle East, the situation in South Africa, world-wide → disarmament, the North–South conflict (→ International Economic Order), as well as the ban on international → terrorism. By a simple majority vote, the Conference and the Council adopt certain resolutions on the subjects in question, which the national groups then communicate to their governments and inter-governmental organizations.

As regards the UN, the Union enjoys consultative status, under which it may state its position in the → United Nations Economic and Social Council. Before and after important international meetings at inter-governmental level, the Union organizes conferences on the issues at stake and has thus been able to provide important initiatives, for example regarding the deliberations of the Conference on Security and Cooperation in Europe (→ Helsinki Conference and Final Act on Security and Cooperation in Europe) and its follow-up meetings, as well as the → Conferences on the Law of the Sea.

Within the framework of the Union, bilateral and multilateral groups of parliamentarians formed by the members of many national parliaments have been set up, which, through the personal contacts thus established, render a contribution towards more effective cooperation in the international field. Last but not least, the secretaries-general of parliaments meet in order to study the law, practice and procedure of national parliaments and to propose measures for improving their working methods.

4. Evaluation

Over the years, the ideals of the Union have clearly had some influence on the policies of governments, and some of the organization's initial objectives have been achieved, particularly as regards the setting up of a universal international organization (→ International Organizations, General Aspects) – first the → League of Nations and today the United Nations. Time and again the Union has made valuable suggestions and proposals regarding international conferences and agreements. Even though the Conference and the Council do not have any legislative powers of their own, either at the national or at the supranational level, their indirect influence on governmental policy should not be under-

estimated. Finally, the bilateral and multilateral groups of parliamentarians render a valuable contribution towards understanding across national borders.

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INTERPOL

1. *Description*; *Historical Background*

"Interpol" is an acronym for the International Criminal Police Organization (ICPO). Its membership comprises criminal police authorities from 133 affiliated countries (the significant absentees are the States of Eastern Europe, with the exception of Romania and Hungary, which joined in 1973 and 1981 respectively); its aim is to further cooperation between these authorities in their fight against international crime (→ Criminal Law, International). The aims of Interpol are laid down in Art. 2 of its revised Constitution: (a) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights" (→ Human Rights; → Human Rights, Universal Declaration (1948)); and (b) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

The activities of Interpol are related to crimes which cannot be successfully dealt with by the police forces of single countries: Where the criminal operates in more than one country or crosses national frontiers; or where his crimes affect more than one country (e.g. traffic in narcotic drugs (→ Drug Control, International) or in women and children (→ Traffic in Persons), or currency forging). Interpol is strictly forbidden to undertake any intervention or activity having a political, military, religious or racial character.

Interpol's present structure is the result of a statutory reform which took place in 1956. Its predecessor, the International Criminal Police Commission (ICPC), was formed in Vienna in 1923 and pursued similar activities. After World War II, which had brought the activities of the Commission to a standstill, Interpol was revived on the initiative of Belgium. Paris (St. Cloud) became the seat of its General Secretariat.

2. *Organization*; *Activities*

Interpol is not an international organization. It is therefore not a → subject of international law and has no jurisdiction of its own. Neither States nor governments can become members; membership is restricted to police authorities. Nevertheless, the governments of the affiliated countries feel responsible for the work done within the framework of the organization, and financial contributions from members come from the national budgets of the affiliated countries. Moreover, under Art. 4(2) of the Constitution, a request for membership must be submitted by the appropriate governmental authority.

Interpol is also mentioned in international treaties (e.g. in Art. 16(3) of the European Convention on Extradition of December 13, 1957). Interpol has relations to other international governmental or non-governmental organizations such as the → International Civil Aviation Organization, the → International Telecommunication Union, the → World Health Organization and the International Narcotics Control Board.

A special legal relationship exists between Interpol and France. A headquarters agreement of 1972 guarantees the status of its headquarters as that of an international organization; this includes immunities with regard to the French authorities and certain privileges.

The organs of Interpol are the General Assembly, the Executive Committee, the General Secretariat, the National Central Bureaus, and the Advisers, who may be consulted by Interpol on scientific matters.

The General Assembly meets annually, controls the policy of the organization and decides on applications for membership. The Executive Committee is composed of the President, three Vice-Presidents and nine delegates from different

countries. The Executive Committee prepares the agenda of the annual meeting of the General Assembly and supervises the implementation of its decisions.

The General Secretariat is the coordinating body and information centre of Interpol. It consists of four departments and is headed by the Secretary-General, who is proposed by the Executive Committee and approved by the General Assembly for a period of five years. The General Secretariat communicates with all the National Central Bureaus from which it receives the necessary information. This information is collected, recorded, analysed and made available to members. The activities of the General Secretariat are financed by contributions from members.

The main bulk of work in the field of international cooperation in police matters rests with the National Central Bureaus. These are police authorities named for this function by the affiliated countries. In general, the National Central Bureaus communicate with each other directly; if more than two of them are involved, the General Secretariat may exercise coordinating functions.

In their cooperation, the National Central Bureaus make use of the institutionalized services and instruments Interpol offers: codes, institutionalized communication services, working languages, the Interpol radio network, specialized agencies on a regional basis, and the central information facilities of the General Secretariat. The competences and the powers of the National Central Bureaus are strictly limited to those accorded to them by their national laws. In addition to various reports, Interpol publishes the periodical "International Criminal Police Review" in English, French and Spanish.

By providing its institutionalized services and instruments, Interpol has become a major body in the fight against international crime, for example in the areas of economic criminality or narcotic drugs traffic. Its advantages derive from providing institutionalized mutual assistance in police matters (i.e. → Legal Assistance between States in Criminal Matters; → Legal Assistance between States in Administrative Matters) without the necessity of concomitant diplomatic support. International police cooperation can thus be organized more effectively. Under present consideration is whether Interpol should be made even more effective by introducing electronic data-processing systems and by strengthening the existing cooperation between members in particular geographical regions.

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INVESTMENT DISPUTES, CONVENTION AND INTERNATIONAL CENTRE FOR THE SETTLEMENT OF

1. History and Background

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was the result of initial efforts made by the → International Bank for Reconstruction and Development. The IBRD, as a development institution, has always been concerned with capital flows from the developed to the → developing

States. Since private → foreign investment constitutes probably the most important source of development funds, the IBRD in the 1960s began to explore whether it could help improve the investment climate. The basic object was to reduce the likelihood of unresolved conflicts between host countries and investors and, at the same time, to eliminate the risk of a confrontation between the host country and the national State of the investor (→ Peaceful Settlement of Disputes).

The Executive Directors of the IBRD thought that the creation of an institution designed to facilitate the settlement of disputes between States and foreign investors would promote mutual confidence and stimulate the flow of private international capital. In 1964, therefore, the Board of Governors of the IBRD instructed its Executive Directors to formulate a convention setting up such an institution. Subsequently, a Legal Committee composed of representatives of 61 member countries was set up to assist the Executive Directors in their task. After finalizing the text and agreeing on the language of the accompanying report, the Executive Directors submitted the Convention on March 18, 1965 to member governments for signature and ratification, acceptance or approval. The Convention entered into force on October 14, 1966, one month after the 20th country had deposited its instrument of ratification (cf. Art. 68(2)). The International Centre for the Settlement of Investment Disputes (ICSID) was set up under this Convention.

2. *Structure of ICSID*

(*a*) *Organs*

The ICSID itself does not arbitrate. Conciliation (→ Conciliation and Mediation) and → arbitration proceedings are administered by the ICSID, which is an international institution with its seat in Washington, D.C. The ICSID is, therefore, essentially a secretariat (→ International Secretariat). It is governed by an Administrative Council to which each State that is a party to the Convention appoints a representative with one vote. The Council has an *ex officio* Chairman (without a vote), the President of the IBRD. For proceedings under the auspices of the ICSID, the Administrative Council adopts administrative and financial regulations and rules of procedure for the institution of proceedings, for conciliation proceedings and for arbitration proceedings.

The principal officer of the ICSID is the Secretary-General. He is also the registrar.

The ICSID maintains a Panel of Conciliators and a Panel of Arbitrators. Each contracting State may designate to each panel four persons who may, but need not be, its nationals, and the Chairman of the Administrative Council may appoint ten persons.

(*b*) *Membership*

States members of the IBRD may become parties to the Convention. Also, a State which is not a member of the IBRD may become a party if it is a party to the Statute of the → International Court of Justice and if the Administrative Council, by a vote of two-thirds of its members, invites it to become a party. As of January 6, 1981, 78 States had become parties to the Convention.

(*c*) *Finances*

The normal administrative costs of running the ICSID are at present defrayed by grants from the IBRD after the Administrative Council, by a two-thirds majority of its membership, has approved the ICSID annual budget. Charges are levied on parties to conciliation and arbitration proceedings conducted under the auspices of ICSID for the use of its facilities. The Convention also provides in Art. 17 that, if the expenditures of the ICSID cannot be met from charges for the use of its facilities, or out of other receipts, the excess shall be borne by parties to the Convention which are members of the IBRD in proportion to their respective subscriptions to the capital stock of the IBRD, and by parties to the Convention which are not members of the IBRD in accordance with the provisions of the administrative and financial regulations of the ICSID.

3. *Activities*

(*a*) *Appointment of conciliators and arbitrators*

Conciliation and arbitration proceedings are conducted by conciliators and arbitrators appointed in accordance with the provisions of the Convention, and the parties themselves have broad discretion. However, a failure of agreement on their part will not thwart the constitution of a

conciliation commission or arbitral tribunal. It is a requirement that the commission or tribunal consists of an uneven number of members, not excluding the possibility of a sole conciliator or arbitrator. In the case of arbitration, there is an additional requirement, namely, that the majority of the members of the tribunal must be of a nationality other than that of the State which is a party to the dispute. The parties may depart from this rule by agreement only if each member of the tribunal (or the sole arbitrator) has been appointed by agreement of the parties. If the parties have failed to appoint the commission or tribunal within 90 days after registration by the Secretary-General of the request for conciliation or arbitration, the remaining designations will be made by the Chairman of the Administrative Council. The parties may, but need not, appoint conciliators and arbitrators from the predetermined panels, but the Chairman is restricted to the panels when he makes appointments.

(*b*) *Jurisdiction*

Proceedings under the auspices of the ICSID must meet four tests set out in Art. 25 of the Convention. The first and most important is that both parties to the dispute must have consented to have recourse to the ICSID. However, once this requirement has been met, the consent becomes irrevocable and cannot be unilaterally withdrawn. The second test concerns the nature of the parties. One party must be a contracting State or one of its constituent subdivisions or agencies, and the other party must be a national of another contracting State. In addition to the requirement of consent and the nationality requirement for establishing jurisdiction *ratione personae*, two further tests must be met under the heading of jurisdiction *ratione materiae*: The dispute must be a "legal dispute", and it must arise directly out of an "investment". Neither term is defined in the Convention.

The Convention provides that conciliation commissions and arbitral tribunals shall be the judges of their own competence.

(*c*) *Applicable law for arbitrations*

Unless the parties have given the tribunal the power to decide a dispute *ex aequo et bono*, the tribunal must decide in accordance with such rules of law as may be agreed by the parties. In the absence of agreement, the tribunal must apply the law of the State party to the dispute (including its conflict rules) and such rules of international law as may be applicable. A decision cannot be refused on the ground of *non liquet*.

(*d*) *Procedure*

Conciliation and arbitration proceedings are to be conducted, unless the parties otherwise agree, in accordance with the Conciliation Rules and Arbitration Rules of the ICSID in effect on the date on which the parties consented to ICSID jurisdiction. In the case of a lacuna in procedural rules, the commission or tribunal decides the question (→ Procedure of International Courts and Tribunals).

(*e*) *Special features of arbitration*

The Convention provides for an arbitral award to be rendered notwithstanding the default of one of the parties (Art. 45). It expressly states, however, that failure of a party to appear or to present its case shall not be deemed an admission of the other party's assertions. The tribunal decides all questions, and its awards must be in writing, deal with every question submitted, and state the reasons upon which they are based (Art. 48).

The Convention provides three types of remedies against an arbitral award: (i) a request for interpretation; (ii) a request for revision on the basis of discovery of new facts; and (iii) a request for annulment on a limited number of grounds (→ Judicial and Arbitral Decisions: Validity and Nullity). Subject to these remedies provided by the Convention itself, the arbitral award is final and binding on the parties. Furthermore, each contracting State must recognize such an award rendered pursuant to the Convention as binding, regardless of whether it, or one of its nationals, was a party to the dispute, and must treat the pecuniary obligations of the award, upon its certification by the Secretary-General of the ICSID, as if they were a final judgment of a court in that State (→ International Law in Municipal Law: Law and Decisions of International Organizations and Courts). Moreover, they must enforce them as such, subject to any exceptions permitted by their law on the ground of

→ sovereign immunity. There are special provisions for enforcement in → federal States.

4. *Evaluation*

By June 31, 1981 nine arbitration proceedings had been conducted under the auspices of the ICSID, and two had recently been registered. An historical survey of the proceedings is included in ICSID's annual reports. In addition, agreements referring disputes arising from investments to the ICSID have run into the hundreds. The reason for this popularity is that the submission of disputes to the ICSID has many advantages.

(*a*) *Advantages to host States*

First, a host State that agrees to arbitrate a dispute with a foreign investor is assured that the investor's national State or States will not give him → diplomatic protection or bring an international claim on his behalf, thereby minimizing the opportunities for intervention by other States in its affairs. Second, the host State may require the exhaustion of local remedies as a condition of its consent to the use of ICSID (→ Local Remedies, Exhaustion of). Third, unless there is agreement between the parties on another law, the law applicable in an arbitration is that of the host State. Fourth, in view of the participation of State organs in proceedings under the ICSID, the procedural requirements have been kept flexible enough to avoid automatically imposing on States any burdens they might consider unacceptable in view of their special status as parties to a litigation with a private person. Last, the host State also enjoys the certainty that a pecuniary arbitral award will be treated by the courts of any member State as if it were a final judgment of a court in that State.

(*b*) *Advantages to investors*

The Convention affords private persons the only institutionalized international forum for litigating with States, and its jurisdictional requirements concerning → nationality are less restrictive than those of the nationality of claims rule. Also, private persons may invoke the jurisdiction of the ICSID against State organs and constituent subdivisions. Finally, private investors are in a position, though to a lesser extent than States, to secure execution of an arbitral award against their adversaries.

(*c*) *Advantages to all interested parties*

The clause dealing with settlement of disputes by the ICSID in an agreement between host State and investor is firmly rooted in international law. Even repudiation of the principal agreement would not deprive the other party of the right to resort to the ICSID. Both parties would also be certain that any proceeding properly instituted under ICSID auspices would actually take place and, in the case of arbitration proceedings, result in due course in an arbitral award. This result would hold true regardless of the other party's failure to participate in the constitution of the commission or tribunal or in the proceedings, and regardless of the failure of the parties to agree on a procedure. Similarly, a finding of *non liquet* on the ground of silence or obscurity of the law cannot be brought by a tribunal. The Convention also enables a State, whose investors might wish to seek its protection, to avoid the embarrassment of foreign conflicts by persuading or otherwise inducing them to rely on the ICSID, thus removing any disputes from the inter-governmental level.

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C. F. AMERASINGHE

LEAGUE OF NATIONS

1. Origins. 2. Nature and Objects; Peaceful Settlement. 3. Sanctions. 4. Article 10: Guarantee against Aggression. 5. Disarmament; Open Diplomacy; Consistency with other Treaties. 6. Other League Functions under the Covenant. 7. Other Functions under Treaty: Minorities etc. 8. Organs. (a) Assembly. (b) Council. (c) Secretariat. (d) Other organs. 9. Membership. 10. Finances. 11. Procedure and Voting. 12. Record and Appraisal.

1. Origins

Though the League of Nations undoubtedly owed something to the schemes for the preservation of peace popular in the 17th and 18th centuries, such as those associated with the names of the Duc de Sully, Abbé de St. Pierre and Immanuel Kant (→ Peace, Proposals for the Preservation of), and even more to the 19th century device of the Concert and the 19th and early 20th century beginnings in the realm of international technical union and organization, its immediate ancestry and the source of its very name are to be found in the deliberations and plans of the unofficial or semi-official pacifist groups of the World War I period: notably the (British) League of Nations Society and the (American) League to Enforce Peace (→ Peace, Historical Movements towards; → Pacifism). The last of President Wilson's Fourteen Points, on the basis of which peace was offered, had been a call for the establishment of "a general association of nations... under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike" (→ Wilson's Fourteen Points; → Collective Security; → Territorial Integrity and Political Independence). Wilson insisted that the Peace Conference should begin its work with the drafting of the Covenant of the League on the basis of a provisional text prepared by David Hunter Miller and Mr. (later Sir) Cecil Hurst, who in turn drew principally on the drafts of the (British) Phillimore and (French) Bourgeois Committees, on papers by Wilson himself and Colonel House, to which the contributions of Lord Robert (later Viscount) Cecil must not go unremarked, and on General Smuts' uplifting pamphlet: "The League of Nations: A Practical Suggestion". The result was a series of 26 articles, cast in singularly felicitous and indeed evocative language, which went as Part I into each of the European Peace Treaties (→ Peace Treaties after World War I; → Saint-Germain Peace Treaty (1919); → Trianon Peace Treaty (1920); → Versailles Peace Treaty (1919)); the constitution of the → International Labour Organisation being similarly incorporated as Part XIII.

2. Nature and Objects; Peaceful Settlement

The Covenant and the body it set up, the League, were without other than sketchy paper precedent in all the long history of political science. They thus embodied and laid down with binding force principles and rules which were in fact revolutionary. Their retrospective understanding and assessment, however, is complicated by the fact that, though the League and the Covenant had no forerunners, they have had successors in the shape of the → United Nations and the → United Nations Charter, which in many respects show very little advance or improvement on their predecessors and impart to any present-day examination of the earlier system an irresistible impression of *déjà vu*, which is wholly false and which tends to obscure the Covenant's essential novelty.

In contrast to the Charter, the Covenant, as its name implies, and as is implied equally by its

French equivalent (*pacte*) was not so much the constituent instrument of an international organization as a set of undertakings between States. These, the signatory parties, set out in the → preamble their prime objectives as being the promotion of international cooperation and the achievement of peace and security by the acceptance, principally, of "obligations not to resort to war". What was contemporaneously conceived to be the States' absolute right of → war was not, however, sought to be excluded altogether – as in the later → Kellogg-Briand Pact (1928). Art. 11 merely declared "any war or threat of war", whether immediately affecting a League member or not, to be "a matter of concern to the whole League", and further, though probably inadvertently, that "the League", and not merely its members, should take in relation thereto any action which might be deemed wise and effectual to safeguard peace. Moreover, it established "the friendly right of each Member" to bring to the attention of Assembly or Council "any circumstance whatever ... which threatens to disturb international peace or the good understanding between nations upon which peace depends". And in practice this stipulation was construed as authorizing some degree of preventive action on a collective basis. But it was Art. 12 which laid down the precise obligations of individual State members, restricting these to the submission to arbitral (or judicial) settlement, or to the political process of enquiry by the Council, of any dispute "likely to lead to a rupture", and to an obligation not to go to war until three months after the award or report in such matter (→ Peaceful Settlement of Disputes; → Arbitration). Where the alternative of arbitral or judicial settlement was selected, this relatively small limitation on freedom of action was, under Art. 13, added to by an undertaking not to go to war at all with any League member complying with the award or decision. Similarly, under Art. 15, there was a parallel further obligation not to resort to war with a party complying with the Council's recommendations in relation to a dispute submitted to that body. Strictly, however, this alternative of political settlement was not exhaustive, the Council having, in virtue of Art. 15, para. 8, no power to act at all in relation to a dispute claimed and found to be a matter exclusively of → domestic jurisdiction – though the test of domesticity laid down was the objective one of international law rather than a purely subjective one such as Art. 2(7) of the UN Charter lays down. Further, the obligation not to make war on a compliant party obtained only when the Council's report was arrived at unanimously, exclusively of the parties. There was thus left, in theory at least, a so-called "gap" in the Covenant in its role as a curb on the right of war: namely, the case where the Council failed to achieve unanimity and a dissatisfied disputant was prepared to wait three months before appealing to arms. Much time and energy was expended in attempts to eliminate this *casus omissus*, the → Geneva Protocol for the Pacific Settlement of International Disputes, drafted in 1924 but failing of general acceptance, with its provision for the ultimate submission to arbitration of all disputes not otherwise resolved, being the most notable of such efforts. But in practice the matter was unimportant: No war occurred during the life of the League which did not involve a clear breach of the Covenant or an act which would have constituted such a breach had that instrument been binding on the actor.

3. Sanctions

The gap or gaps in the provisions of Arts. 12, 13 and 15 apart, Art. 16 laid down that any member resorting to war in disregard of its "covenants" under these Articles should *ipso facto* be deemed to have committed "an act of war" against all other members. But this did not, and was not intended to, involve that a state of war necessarily and automatically came into existence between the covenant-breaking member and all others. Though such other members impliedly acquired or resumed through such "act of war" an unfettered right of war against the covenant-breaking member, they nevertheless undertook no more than to subject it to the severance of all trade or financial relations (cf. → Embargo), the prohibition of all intercourse between their nationals and its nationals, and the prevention of all financial, commercial or personal intercourse between its nationals and those of any other State, League member or not. And even this stipulation for automatic "economic sanctions" (though not in fact so called in the Covenant) was

seen to call for urgent amendment as respected the prevention of intercourse with third States when it emerged that a State as powerful as the United States was to remain outside the League. And though formal changes in the Covenant (proposed in 1921) substituting a system of gradual and partial, rather than immediate, economic sanctions, subject to positive decision by the Council never came into actual force for lack of the requisite ratifications, their substance was observed on the only occasion → sanctions were in fact applied.

Art. 16 further provided that it should be the duty of the Council in case of resort to war by a member in breach of Arts. 12, 13 or 15 to recommend to the several governments concerned "what effective military, naval or air force the Members of the League should severally contribute to the armed forces to be used to protect the covenants of the League" (→ International Military Force). The same Article went on to impose an obligation of mutual support between members in financial and economic measures taken, as well as in the furnishing of passage for military forces and, finally, for the possible expulsion from the League of the Covenant-breaking State. Art. 17 provided for the extension *ad hoc* as it were of League membership to non-member States involved in disputes within the ambit of the Covenant – and indeed for the application of Art. 16 to any such State refusing the obligations of membership and resorting to war against a member. And the same Article granted to the Council a discretion to "take such measures and make such recommendations as will prevent hostilities and will result in the settlement" of any dispute between non-members spurning the offer of *ad hoc* membership.

4. Article 10: Guarantee against Aggression

Even with mention of this last provision the recital of the scope of the system of obligations in relation to peace and security contained in the Covenant is not wholly complete. On the contrary, there remains to be mentioned Art. 10 which, echoing the phraseology of the Fourteen Points, stipulated that members should undertake "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members" (→ Aggression). But this undertaking, though restricted to the membership of the League, was not linked to the sanctions system of Art. 16, it being provided merely, in Art. 10 itself, that in the event of "any such aggression" or any threat or danger thereof the Council should "advise" on the means whereby this obligation should be fulfilled. It might be thought that the clear meaning of this wording was that the Council's role in relation to the sanctioning of the obligation imposed was simply advisory. Nevertheless, uncertainty as to its implications proved to be a prime obstacle to consent to the ratification of the Covenant by the United States' Senate, with the result that a long campaign was conducted to explain it away, culminating in an authoritative interpretation, adopted in 1924, assuring individual members of their ultimate freedom of action in the matter.

5. Disarmament; Open Diplomacy; Consistency with other Treaties

In addition to this series of undertakings in relation to abstention from war and aggression and the pacific settlement of disputes, the Covenant imposed a number of what may be termed positive obligations upon members. Thus by Art. 8 the members at least agreed that the maintenance of peace required the reduction of armaments to the lowest limits consistent with national safety and that the private trade in arms (→ Arms, Traffic in) was open to grave objection, undertaking in consequence the exchange of information as to their scale of armaments etc. and deputing to the Council the formulation for their consideration of → disarmament plans. The securing of open diplomacy, another Wilsonian doctrine proclaimed in the Fourteen Points, was similarly sought by the stipulation in Art. 18 that future treaties of members should be registered with and published by the Secretariat, and should not be binding until so registered (→ Treaties, Registration and Publication). By Art. 20 the members agreed that the Covenant should be accepted as abrogating previous inconsistent obligations or understandings *inter se* and solemnly undertook not to conclude any future inconsistent engagements. The same Article imposed a duty on members to procure their release from prior inconsistent obligations towards non-

members. Incidentally, Art. 21 purported in some sense to except from these provisions "international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace". And the sequence of provisions in relation to treaties was completed by the conferment, under Art. 19, upon the Assembly of liberty "from time to time to advise the reconsideration by Members" of treaties which should have become inapplicable, as well as the consideration of "international conditions whose continuance might endanger . . . peace".

6. Other League Functions under the Covenant

Nor was the Covenant's sole concern peace and security in both a positive and a negative sense. For Art. 22 inaugurated the celebrated → mandates system, constituting as a "trust for civilisation" the tutelage of at least the nascent nations in territories detached from the defeated Powers, and of colonial territories similarly detached (→ Colonies; → Decolonization). Art. 23 called equally for efforts by member States in the direction of fair labour standards, fair treatment of all colonial peoples and for the prevention and control of disease (→ Public Health, International Cooperation); for the entrusting to the League of a general supervision of the execution of agreements with regard to the traffic in women and children (→ Traffic in Persons) and the drug traffic (→ Drug Control, International) and for the arms traffic in some of its aspects; and for the making of provision for freedom of communications and transit and the equitable treatment of the commerce of all members. Art. 24 similarly provided for a general League supervision of what are now called Specialized Agencies – international organizations of world scope with specialized responsibilities (→ United Nations, Specialized Agencies). And by Art. 25 the members agreed to promote the establishment and cooperation of national → Red Cross organizations, with a peacetime as well as a wartime mission of prevention of disease and mitigation of suffering.

7. Other Functions under Treaty: Minorities etc.

Other specific functions were attributed to the League by the → Versailles Peace Treaty, Art. 49 constituting it "trustee" of the government of the → Saar Territory and Arts. 102 and 103 making it the protector of the Free City of → Danzig and guarantor of its constitution. The peace treaties with Austria and Bulgaria and the minorities treaties with Poland, the Serb.-Croat-Slovene State and Romania similarly placed the stipulations in favour of → minorities, which those instruments contained under the League's guarantee. And Art. 88 of the Treaty of Saint-Germain made the independence of Austria inalienable without the Council's consent.

8. Organs

Art. 2 provided for "the action of the League" under the Covenant to be effected "through the instrumentality of an Assembly and of a Council, with a permanent Secretariat". In a certain sense, therefore, the Covenant inaugurated a pattern of international organization which has become so familiar as to be thought largely inevitable. For in the constitutions of virtually all international organizations, provision is made for a plenary representative organ in which, agreably to the doctrine of the equality of States, every member has an equal voice; for a limited representative organ, in which in deference to their power and interests, the larger States have a preferential position, at least in the sense that they are permanent members thereof; and for a central or executive organ endowed with a greater or lesser measure of autonomy. But it is to be emphasized again that it is to a degree a misconception to construe the bare text of the Covenant as establishing an international organization rather than a mere system of obligations of promises of the several States members, for the performance of which certain machinery was created – Council, Assembly, and a secretarial apparatus.

(a) Assembly

The Assembly was thus envisaged as a periodic conference of all members on the model of the successive → Hague Peace Conferences of 1899 and 1907. Art. 3 provided that the Assembly was to meet "at stated intervals and from time to time as occasion may require", at the seat of the League – established by Art. 7 at Geneva – "or at such other place as may be decided upon". It was invested with no particular functions other than

the admitting of new members by two-thirds majority vote (Art. 1), the selection "from time to time in its discretion" of the non-permanent members of the Council and the approval of increases in the membership of that body (Art. 4), the approval of any appointment to the office of Secretary-General after the original appointment (Art. 2), and the advising of reconsideration of treaties that had become inapplicable and the consideration of international conditions the continuance of which might endanger peace (Art. 19). But it was endowed with a general capacity to deal "with any matter within the sphere of action of the League or affecting the peace of the world" (Art. 3). Moreover, each member was, by Art. 11, accorded the friendly right to bring to the attention of either the Assembly or the Council any circumstances whatsoever threatening peace or good understanding. Under Art. 15 also the Council might, and at the request of any party made within 14 days was obliged to, remit any dispute referred to it to the Assembly, whereupon that body stood in the place of the Council, its report, if concurred in by a majority including those States members of the Council, having the same force as a unanimous report of the Council.

But from the first the Assembly emerged in practice as something more prominent than had been expected. To begin with, it resolved at once to meet annually. Upon the immediate discovery that the original provision of Art. 6 for the allocation of the expenses of the Secretariat according to the system of voluntary self-assessment of the → Universal Postal Union was quite unworkable, the Assembly procured an amendment, which came into force in 1924, arrogating to itself exclusive power to decide how "the expenses of the League" should be borne by the members (→ International Organizations, Financing and Budgeting). It assumed a competence at least to discuss matters in which the Council had powers of decision, such as the formulation of disarmament plans under Art. 8 and the oversight of the mandates system under Art. 22. It inaugurated practices of the highest importance in the development of international organizations, among them those of sitting in simultaneous committees of the whole, of sitting in public, and of conducting an annual debate, in parliamentary rather than diplomatic style, in which the proceedings of the Council and the general political scene were reviewed.

(b) Council

The Council, or Executive Council as it was proposed to be called, was originally envisaged as an *ad hoc* body convoked for the consideration of a particular dispute, comparable to the Commissions of Inquiry provided for in the 1907 Hague Convention I for the Pacific Settlement of International Disputes of which one at least had functioned with marked success in relation to the → Dogger Bank Incident. But the text of Art. 4 of the Covenant came to provide instead for a standing Council, required to meet at least once a year. That text contemplated, however, a Council in which there would be, in the first instance certainly, a majority of the → Great Powers, a permanent seat being assigned to each of the five Principal Allied and Associated Powers and only four elective places to the remainder of the membership of the League. But this apparent imbalance was immediately altered because of the failure of the United States to take its place. As a result of this defection and of the absence also from the League in the first years of both the Soviet Union and Germany, the Council – notwithstanding its original design as the framework of Great Power cooperation in matters of peace and security – was in practice severely handicapped. It was inhibited further by its exclusion, under the scheme of the peace treaties, from concern with questions of → reparations and war debts which, despite their obvious influence upon general political questions, were made the concern rather of the Supreme Council, the → Conference of Ambassadors and the Reparations Commission.

The Council's enlargement in 1926 to give a permanent seat to Germany on her admission to the League and to bring the total membership up to fourteen (it had been brought up to ten in 1922) scarcely altered its character as but one among several parallel channels of relations between the Great Powers. Emulating the example of Sir Austen Chamberlain, foreign ministers began to attend Council meetings. But not only did this produce the not altogether desirable result of involving the Council, which should have

been a world organ, too much in day-to-day European politics, but also Council meetings were made the occasion of simultaneous meetings of the Locarno Powers – the parties to the treaties of → guarantee, principally Great Powers, concluded outside the League for the additional security of France and Belgium in connection with Germany's entry into the League (→ Locarno Treaties (1925)). And, though the Council was reinforced by the accession of the Soviet Union in 1934, it was also weakened by that date through the notification by Japan and Germany of their withdrawal, which took place in 1935, to be followed by that of Italy in 1939.

(c) Secretariat

Though the Covenant provided, as has been seen, for a "permanent Secretariat" and purported to confer on "the Secretariat" *eo nomine* responsibility for the registration and publication of treaties (Art. 18), it envisaged this body as comprising no more than "a Secretary-General and such secretaries and staff as may be required", the Secretary-General, who was to act in that capacity at all Assembly and Council meetings, having power of appointment of the secretaries and staff subject to the approval of the Council. It was thus the genius of the first Secretary-General, named in the Annex to the Covenant, Sir Eric Drummond, assisted by Leon Bourgeois' motioning to him to take his seat at the Council table itself on the occasion of the first meeting on January 16, 1920, which fashioned the Secretariat into an international civil service of considerable size and high competence and reputation (→ Civil Service, International). In different hands it might well have assumed a different form – for instance a series of national groups serving on secondment from national civil services, each responsible for a different aspect of the League's activities. Had the first Secretary-General been the French ex-Minister, Albert Thomas, who became the first Director-General of the International Labour Office, rather than a former British civil servant, it might have assumed an even more prominent part in the League's business than it did. But it is abundantly clear that Drummond neither wished nor contrived to confine his creation to a purely "secretarial" role.

(d) Other organs

The Covenant provided in Art. 14 for the establishment of a → Permanent Court of International Justice, which was accordingly set up under its own Statute in 1922. Pursuant to Art. 9 the Council set up in 1920 the Permanent Advisory Commission on Military, Naval and Air Questions, staffed by French army, British naval and Italian air force officers on secondment. But this inadequate body was reinforced already at the first Assembly by the Temporary Mixed Commission for the Reduction of Armaments made up originally of individuals selected for their personal qualities, which, before its transformation into the Preparatory Commission for the Disarmament Conference, consisting of governmental delegates, did notable work in preparing plans serving as the bases both of the Geneva Protocol and the Locarno Treaties. The Permanent Mandates Commission, constituted in accordance with Art. 22, similarly consisted of individual experts rather than official delegates, its make up thus contrasting with that of its successor, the United Nations Trusteeship Council (→ United Nations Trusteeship System). Apart from these subordinate organs envisaged in the Covenant itself, the League came to establish a number of "organisations" so-called: notably the Economic and Financial Organisation, made up of two committees of individual experts appointed by the Council; the Communications and Transit Organisation, operating under a constitution formally adopted at the Barcelona Conference of 1921 and approved by the Assembly; the Health Organisation, in the work of which many non-member States participated; and the Refugee Organisation, which was established as a High Commissariat in 1920 and fittingly renamed the Nansen Office after its first High Commissioner in 1930 (→ Refugees, League of Nations Offices). For the implementation of Art. 23 the Assembly established a notable Advisory Committee on Traffic in Opium and other Dangerous Drugs, which was responsible for the elaboration of the Drugs Conventions of 1925 and 1931. The parallel Advisory Committee on the Traffic in Women and Children was likewise set up in 1921 under the same Article. The Committee on Intellectual Cooperation was established in 1922, but with a

miniscule budget subsequently eked out largely through the generosity of the French and Italian Governments, which established Institutes at Paris and Rome.

9. Membership

Under the Annex to the Covenant original membership of the League was confined to (a) the 27 victorious signatories of the Treaty of Versailles, the "British Empire" comprising, however, not only the United Kingdom but the five additional units of Canada, Australia, New Zealand, South Africa and also still-dependent India, bringing the number up to 32; and (b) 13 named neutral States. The United States, the Hedjaz and Ecuador failed to ratify the Treaty and to take up membership. Art. 1(2) declared membership to be open in addition to "any fully self-governing State, Dominion or Colony" giving effective guarantees of its sincere intention to observe its international obligations and accepting any regulations prescribed in regard to its forces and armaments, its admission being approved by two-thirds of the Assembly. Under this provision 22 new members were admitted, including the ex-enemy States of Austria and Bulgaria (1920), Hungary (1922) and Germany (1926) as well as another Great Power originally excluded, the Soviet Union (1934). No generally recognized State other than the United States was not at some date a member. Art. 1(3) permitted a member to withdraw on the giving of two years' notice and the satisfaction of all existing obligations. Sixteen members withdrew, beginning with Costa Rica (1927) and Brazil (1928), and including Germany and Japan (1935), Italy (1939), and Spain (1941). The Soviet Union was expelled pursuant to Art. 6(4) in 1939.

10. Finances

Art. 6(5) of the Covenant provided originally that "the expenses of the Secretariat" should be borne by the members in accordance with the apportionment of those of the Bureau of the Universal Postal Union. But this apportionment was simply by agreement between Switzerland and each other member individually, a system clearly unworkable in relation to any considerable expenditure. Accordingly, the Assembly at its first session introduced an amendment, which came into force in 1924, substituting the rule that that body should decide the proportion of "the expenses of the League" to be borne by each member, thus inaugurating an annual levy. Perhaps misapplying the traditions of parliamentary control over taxation, representatives of, in particular, the British Dominions, and of the United Kingdom also, habitually attacked the proposed budget as being too large, notwithstanding that between 1920 and 1937 the annual average cost of the League, the ILO and the PCIJ, including the cost of building the enormous Palais des Nations, was no more than 27 million gold francs or less than 6 million dollars. Yet it is to be noted that the contribution to this of the British Commonwealth members, which were only seven in number even when joined by the Irish Free State, exceeded a quarter of the total.

11. Procedure and Voting

The Covenant gave no very particular indications as to what procedures the League should follow. Thus the agreement of "two-thirds of the Assembly" under Art. 1 to the admission of a new member could presumably have been arrived at by diplomatic exchanges, without a meeting. But in that Article and elsewhere prescriptions as to voting were made: the general rule laid down by Art. 5(1) was that "decisions" at any meeting of Council or Assembly should require the unanimity of all present, procedural questions, however, needing only a simple majority (Art. 5(2)), and the votes of parties to a dispute not prejudicing unanimity for purposes of Art. 15 (→ Voting Rules in International Conferences and Organizations). The unanimity rule was in 1931 construed to require that "preventive" action recommended under Art. 11 should not be actively opposed by any interested member, surely contrary to good sense. On the other hand, abstentions were not reckoned as contrary votes. And the voting rules were not unduly irksome in practice, for although a formal resolution purporting to impose or even recommend sanctions might have been defeated by the Italian adverse vote in 1935, that matter was presented rather as a question of the establishment of a Committee to co-ordinate the action of the fifty members willing to act, in whose individual hands the power of decision lay. If the League was legalistic in its

procedures therefore, legalism was resorted to rather to evade than to exploit such obstacles to action as the Covenant contained. In its general approach, moreover, the League made many advances on traditional diplomatic methods, introducing, for instance, the practice of holding meetings in public, and the rapporteur system, whereunder the representative of an individual member was entrusted with the management of a particular agenda item.

12. Record and Appraisal

The League survived the defection of the United States to make an uncertain start and to have some immediate success in procuring a peaceful settlement of the dispute between Finland and Sweden respecting the → Aaland Islands (1920), and of those between Lithuania and Poland in relation to Vilna (1923) and Memel (1924). The → Corfu Affair (1923), however, in which the Conference of Ambassadors rather than the League achieved such settlement as there was, revealed in emphatic fashion the truth that the organs of the latter could function only to the extent that their members could agree. And it was their failure so to do which stultified efforts in the directions both of disarmament and of the reinforcement of the security system of the Covenant by such expedients as the draft Treaty of Mutual Assistance (1923) and the Geneva Protocol (1924). What is sometimes regarded as the League's heyday, the period following Germany's admission in 1926, may, furthermore, be seen in retrospect to be one in which a greater measure of international cooperation was enjoyed not so much within the League as within the Locarno Treaties. In any event, a sharp decline began when, in 1931, Japan asserted in relation to → China in effect an absolute right of war and displayed, be it said, a complete disregard even for the traditional laws of warfare – and the League, following the defeat by the Japanese adverse vote of a Council resolution under Art. 11 calling for a ceasefire, took no action beyond the sending of a commission of enquiry. In 1935, Germany having meanwhile joined Japan in giving notice of withdrawal from the League, this time on the pretext, in which, however, there was some superficial truth, that the long-heralded Disarmament Conference had come to nothing. Italy in her turn proceeded to the deliberate violation of the Covenant. The Italian attack on Ethiopia, equally characterized by wilful violations of the *jus in bello*, was indeed sought to be sanctioned by economic measures in which some 50 League members joined. But these measures included neither an oil embargo nor the closing of the → Suez Canal, either of which might have been effective. The reasons assigned for the failure to press matters are various: that an oil sanction would have been unproductive without the cooperation of the United States; or that France and Britain, in the light of Germany's reoccupation meanwhile of the Rhineland in technical breach of the Versailles Treaty, considered it unwise to provoke Mussolini to war with themselves. At all events, this first attempt to enforce the Covenant against a major Power was also the last. In relation to Japan's renewed assault on China in 1937, League action was confined to a condemnation of the aerial → bombardment of undefended towns (→ Open Towns; → Air Warfare). The outbreak of World War II following Germany's attack on Poland in 1939 produced no reaction in Geneva beyond the ignominious postponement of Assembly and Council sessions already arranged. And the last political action of the League was the adoption of the Assembly resolution of December 14, 1939 declaring the Soviet Union to be no longer a member by reason of its refusal to accept mediation of its complaint against Finland.

The lack of political success of the League was of course balanced by some victories and advances in other fields. By and large, however, these did not include the economic field. The League had played a large part in the financial rescue of Austria in the early 1920s. But the World Economic Conference convoked under its auspices in 1927 was unproductive. It was, moreover, the League's fate in its second decade to encounter the greatest economic depression the world had yet seen – and to be found singularly incapable of making any contribution to its cure. In social matters, on the other hand, the League achieved much, and it is no exaggeration to say that the contemporary structure of international social cooperation represented by the UN and the numerous global Specialized Agencies, particularly the ILO and the → World Health Organization, still rests upon the sure foundations laid by the

League. If any single aspect of the League's contribution in this regard is to be picked out, it is perhaps the habit and fashion, adopted early by the non-political organs of the League, of seeking to serve the individual as much as, if not more than, the State. To this attitude much of the current doctrine of → human rights is to be traced.

The conventional verdict upon the League until very recent years has been that the Covenant provided a perfectly adequate system for the preservation of peace, which its members simply failed to operate – for which failure there were, however, some extenuating circumstances, such as the abstention of the United States from all participation in the system its President had so largely inspired and designed; the very novelty of that system; and the ill-luck of the League in encountering a worldwide depression of unprecedented severity with disastrous social as well as economic effects. In short: the members failed the League rather than the League its members. In so far as this verdict underlines that the League was less an organization with pretensions to a corporate will than a mere association of States still largely conserving their sovereign autonomy, it is not misleading. But it fails to focus attention on what were the two most remarkable features of the League's story. The first of these, which should not go unremarked, is that that institution, the League, attracted a greater measure of loyalty and devotion and generated a higher level of faith in and hope for human and international progress than any other creation of man's thought, before or since, has contrived to do. For a whole generation "the League idea" succeeded in dominating political thought and humanitarian sentiment. And the second matter is this: that it was the destiny of the League to encounter a greater measure of deliberate aggression, attended by a wilful and deliberate disregard of all humanitarian considerations, than has ever been manifested – again either before or since – in any comparable span of years. For Japan, Italy and Germany in turn asserted during the life of the League an absolute right to go to war for any reason or no reason, and an indifference to the laws of either war or peace to which the only ultimate answer could be, as in fact it proved to be, likewise war unlimited in scale or method.

But these two matters were not, of course, unconnected and it is in their common source that the explanation of the course of the League's history is to be found. For the time of the League must be seen for what it was: the brief culminating epoch in the development of the power and influence of the nation–State. By the early years of this century that remarkable political device had come to attract more loyalty and obedience and to wield more power than any human insituation thitherto known – more than family, tribe, city, church or cult. In the course of World War I tens of millions had willingly served, and millions had died, in what it is not improper to call its faith as well as its service. In the brief aftermath which was to follow before advancing technology was to render, as it has now rendered, even the greatest State incapable of discharging the first function for which the State was devised, namely the provision of defence against external attack – in that brief aftermath, coinciding with the life of the League, it was but inevitable that the preponderance of human rivalries should come very largely to be canalized into the courses of inter-State relations. This the framers of the Covenant, and the great body of public opinion which anxiously supported them, correctly anticipated. They rightly saw inter-State conflict, as distinct from any other type or form of conflict, as the principal danger of their time and for this reason they established as their prime aim the imposition of some limitation upon the right of war of States. But it was no less inevitable that extreme elements should recognize the State as the chief vehicle and instrument of power, and should seek to pervert it to their ends. And against the "rogue State", dominated and directed by parties lacking in all social conscience, the Covenant could provide no defence. It is thus less true to say that the League failed its members or its members the League than that the populations of the aggressor States acquiesced and even gloried in the disregard by their leaders of their covenants, and indeed of all law – and that those of the remaining States of the world had not as yet generated the will to resist them in arms, as they were ultimately compelled to do.

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LEGISLATION, INTERNATIONAL *see* International Legislation

LIGHTHOUSES, INTERNATIONAL REGULATION *see* International Association of Lighthouse Authorities; Lighthouses and Lightships

LITERARY AND ARTISTIC WORKS, INTERNATIONAL PROTECTION

A. International Recognition of Copyright. – B. Sources and History: 1. Berne and Universal Copyright Conventions; Other Agreements. 2. History. -C. Protection of Literature and Art: 1. Copyright and Author's Right. 2. Kinds of Protection; Enforcement. 3. The Protected Objects. 4. Limits and Cognate Subjects. – D. Protection under the Conventions: 1. Aims of Protection. 2. The Applicability of the Conventions. 3. Basic Principles of the Conventions. 4. Special Treatment for Developing States. – E. Organs and Administration. – F. International Protection of Related Rights. – G. European Law.

A. International Recognition of Copyright

The appropriate legal protection of the results of creative work in the literary and artistic spheres has long been a concern of the international community. The worthiness of this protection was clearly expressed in → human rights instruments of the United Nations. The United Nations General Assembly's Universal Declaration of Human Rights of December 10, 1948 in Art. 27(2) states: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" (→ Human Rights, Universal Declaration).

Moreover, under Art. 15(1) (c) of the International Covenant on Economic, Social and Cultural Rights of December 19, 1966 (which entered into force in 1976), States have taken the obligation upon themselves to protect these rights (→ Human Rights Covenants).

The broad international recognition of copyright in literary and artistic works received its first expression some 60 years before the Declaration of Human Rights in the first great international convention to give protection to copyright: the Berne Convention for the Protection of Literary and Artistic Works (BC) of September 9, 1886. The second great international agreement to take its place alongside the Berne Convention (which in the interim years has undergone many revisions), was the Universal Copyright Convention (UCC) of September 6, 1952. The most recent versions of the texts of both Conventions date back to July 24, 1971 (thus, references to the conventions will refer to these versions, unless otherwise indicated).

The importance of the Berne and Universal Copyright Conventions is shown by their memberships. On January 1, 1982 the Berne Union had 73 member States, including all the Western European States, Japan, and most of the States of Eastern Europe, but not, however, the United States or the Soviet Union. The number of contracting States to the UCC at the same time was 74, again including all the Western European States, most Eastern European States, Japan and also this time the United States and the Soviet Union. In addition, many → developing States have signed the Conventions.

Along with the legal protection of copyright in literary and artistic works is the protection of neighbouring or related rights. However, the international (and national) recognition of these rights clearly has not developed to the same extent as copyright. The most important international agreement which does protect these rights is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations signed in Rome on October 26, 1961, which took effect in 1964. On January 1, 1982 there were 23 member States, including the Federal Republic of Germany, the United Kingdom, Italy, Austria and the majority of the Scandinavian countries but not, for example, France, Japan, Switzerland, the Soviet Union or the United States.

B. Sources and History

1. Berne and Universal Copyright Conventions; Other Agreements

The large number of member countries to the Berne Convention and contracting States to the Universal Copyright Convention, together with the provisions of these Conventions governing their relationship to the other multilateral and bilateral international treaties bearing on the subject of copyright, explains why these other treaties are only of marginal practical importance.

(a) The Berne Convention of September 9, 1886 was completed twice (in conferences in Paris, 1896, and Berne, 1914) and revised many times (at Berlin, 1908, Rome, 1928, Brussels, 1948, Stockholm, 1967, and Paris, 1971). On January 1, 1982, the latest Paris version of the Convention text was binding in its entirety on 41 States. Twenty States remained bound by the 1948 Brussels version and

eleven by the 1928 Rome version. Thailand remained bound by the 1908 Berlin version of the text.

Among the member countries the protection of copyright is determined by the most recent version of the Convention text which is equally binding on the countries in question (BC, Art. 32(1)). If a country newly enters into the most recent (i.e. Paris) version, it applies this version also to such other countries which are not yet bound by this version. For their part, these countries apply in their dealings with the newly entered country the earlier version of the Convention to which they are bound: However, they are entitled to adapt the protection to the higher level provided for by the Paris version (BC, Art. 32(2)). In this way, it is ensured that where there is no version of the Convention text equally binding between member countries of the Berne Union, they are still bound to one another by treaty. This end result agrees with the fact that the Berne Convention creates a union of member countries belonging to it (BC, Art. 1).

(b) On the other hand, no such union of States was founded by the Universal Copyright Convention of September 6, 1952. As of January 1, 1982, the original version of the Convention was binding on 74 contracting States; the 1971 revised Paris version was binding on 35 States.

The relations between States recognizing the revised UCC and those which are bound only by the original version are governed by the 1952 Convention (UCC, Art. IX(4)). Accession to the revised version of the Convention constitutes at the same time accession to the original version (Art. IX(3)). Thus, for the contracting States to the UCC, gaps of protection are also excluded.

(c) Many States are both members of the Berne Union and contracting States to the UCC. Where relations between these States are concerned, if a work originates in a country belonging to the Berne Union (see section D.3 *infra*), only the Berne Convention is applicable (UCC, Art. XVII and para. (c) of the Appendix Declaration thereto). Moreover, the UCC also helps protect the Berne Union from countries withdrawing from it (paras. (a) and (b) of the Appendix Declaration to UCC, Art. XVII): Works originating in these former member countries cannot claim the protection of the UCC in the remaining member countries. However, this protection clause is not applicable to developing countries.

(d) In addition to the Berne Convention and the UCC there are numerous bilateral treaties in force dealing with copyright protection. There are also eleven American multilateral copyright treaties, concluded between 1889 and 1946, partly between Latin American States and partly between them and the United States. One of these is the Montevideo Convention on Literary and Artistic Property of January 11, 1889 which has also been entered into by a number of European States, including Germany, France and Italy. Before and after her accession to the UCC of 1952, the Soviet Union has concluded bilateral treaties on copyright protection with several East European socialist States.

Apart from the area of relations with and between States which belong to neither the Berne Union nor the UCC, the practical importance of all these treaties has been substantially reduced by the two great copyright Conventions. In member countries of the Berne Union, other agreements on copyright are only applicable in so far as they grant to authors more extensive rights or contain other provisions not contrary to the Berne Convention (BC, Art. 20). "In the event of any difference between the provisions", the UCC takes precedence over all the earlier American and other agreements (UCC, Arts. XVIII, XIX). However, rights in works acquired before the Convention came into force are not affected.

2. History

From the 15th century, privileges were granted by the sovereigns of European countries to printers, publishers and authors. Since the 17th century the protection in law of literary and artistic works has developed only gradually in different countries and at different times. In some States, the absence of legal protection lasted well into the 19th century. A consequence of this was that, from an early date onwards, the protection of foreign works under national laws depended upon → reciprocity. Discrimination against foreign works also followed from the fact that in many States copyright protection in the beginning was primarily thought of as a protection in favour of domestic publishers. This, together with the interests of such publishers as well as of the general public in the unrestricted access to foreign lan-

guage works published elsewhere, meant that the introduction of protection against the unauthorized exploitation of foreign literary works in translated form was in many cases delayed.

When, at the end of the 18th and the beginning of the 19th centuries, the idea of intellectual property began to enter the general consciousness, the deficiencies in the protection afforded in some States and the unequal treatment of foreign works were first met with the conclusion of numerous bilateral agreements, at first between the many States of the German Federation, and following 1840, also between States having different languages. As these agreements did not compensate for the deficient protection standards in some States and did not overcome the existing legal fragmentation and as the validity of the agreements themselves often depended on changing trade policies, from 1858 onwards other solutions were sought both at international literary and artistic congresses and in book trade associations. The emerging demands gave impetus towards unifying legislation in as many States as possible together with complete equality in the protection afforded to foreign and domestic works. These aims were deemed attainable through the foundation of a union of States modelled on the → Universal Postal Union.

These efforts led to three diplomatic conferences (→ Congresses and Conferences, International) in Berne between 1884 and 1886 in which the Berne Convention was concluded and the Berne Union was founded. The desired unified copyright legislation was not attained, but agreement was possible on two important principles which, until the present day, have governed the law as expressed in the international conventions on the protection of literary and artistic works, namely the principle of equality of protection of foreign and domestic works (so-called principle of national treatment of foreign works), and the determination of specially granted rights (so-called minimum rights) which would be available in every case to works protected by the Convention in member States. The subsequent revision conferences have led to a steady expansion of the rights specially granted by the Convention.

Until the present day, it has not been possible for the Berne Convention to attain world-wide validity. Above all, the United States could not be induced to join the Union. Therefore, in 1952 at the instigation of the → United Nations Educational, Scientific and Cultural Organization (UNESCO), the Universal Copyright Convention was concluded in Geneva, entering into force on September 16, 1955, and revised in Paris in 1971.

C. Protection of Literature and Art

1. Copyright and Author's Right

(a) For the rights pertaining to literary and artistic works the continental European term corresponding to the Anglo-American "copyright" is "author's right" (*droit d'auteur, diritto di autore, Urheberrecht*).

The terms are not exactly equivalent. The continental "author's right" affords not only protection to an author's exploitation rights, but it also protects his moral rights (*droit moral, Urheberpersönlichkeitsrecht*). Anglo-American "copyright" either does not take these moral rights into consideration (e.g. the United States system) or the protection afforded in the Copyright Acts is inchoate (as in Great Britain). The actual source of the (limited) protection given to the author's non-proprietorial interests in these legal systems is found in the common law. Thus, for example, only a "copyright" can be transferred *in toto* by contract, and not an "author's right". On the other hand, the term "copyright" extends further than "author's right". In addition to the rights pertaining to literature and art, it includes rights in other areas, rights which in all the countries affording protection to "author's rights" are at best recognized as neighbouring rights.

(b) For the development of copyright law, the demand for protection of intellectual property was of special significance. However today, regarding the theoretical justification of copyright protection this idea cannot claim to have sole validity. Above all in the socialist States, the idea is replaced by a theory which places the non-material interests of the author in the forefront.

In all countries, and also under the international Conventions, copyright and author's right are first distinguished from property in material objects by their limited term of protection.

(c) In principle, neither differences in the theoretical justification nor differences between

author's right and copyright can hamper the international protection of literature and art. However, with respect to the level of international protection these differences do have effects. The high standard of protection contained in the Berne Convention has, for example, prevented the United States from entering the Berne Union. Enactment of the American Copyright Act of 1976 has brought the U.S. legislation closer to the Berne Convention. However, there is still no entire conformity which would permit the United States to join the Convention. The Soviet Union, because of her far-reaching restrictive approach in affording copyright protection, is a party only to the original Universal Copyright Convention containing weaker guarantees of protection.

In view of the more extensive range of objects included in the term "copyright" (see section 1(a) *supra*), the conventions must be interpreted to determine whether an object is protected by them or merely by an international agreement on neighbouring rights.

2. *Kinds of Protection; Enforcement*

(a) The classical method of copyright protection, which also is adopted in the international copyright conventions, is to vest exclusive rights in the author of the work in question.

The general practice is to express the author's exclusive exploitation rights as the author's rights to the (positive) use of his work (for example, reproduction or public performance rights). It follows from this, that all others are forbidden to engage in the exploitation of the work without the consent of the author. However, this author's positive right can be limited by rules of public law. Thus, above all in those States with socialist planned economies, as a rule only particular organizations are charged with the exploitation of works of literature and art. Rights to exploit such works in foreign countries may also be transferred only through such organizations. Whether or not such restrictions exist, the author in any case retains the right to forbid exploitation of his work. The international copyright conventions tolerate those restrictions (see BC, Art. 17).

(b) The tendency of the copyright laws in all States is to restrict the author's exclusive exploitation rights in favour of certain privileged purposes, or uses within the framework of "fair use".

These legal limitations may include compulsory licences or statutory licences, where the author is at least entitled to compensation. However, the limitations may also justify the exploitation of works by third parties without the author's consent, free of compensation. The author's exploitation rights which are limited by statutory licences are closely related to those rights of copyright holders which *a priori* take the form of rights to compensation. Examples are the art "proceeds right" (*droit de suite*) which entitles the author of a work of art to a share of the proceeds or profits arising out of the resale of the original of the work, and the "public lending right" which guarantees an author the right to compensation for the lending of books. The art proceeds right is expressly regulated in Art. 14ter of the Berne Convention.

(c) The rights of copyright holders often cannot be enforced individually because of the great numbers of people using the work in question. For this reason, since the mid-19th century in most countries, the collective enforcement of copyright entitlements has developed through the efforts of so-called collecting societies. The need for such societies first appeared in relation to the performance of musical works, followed by the public communication of music by phonograms and finally, despite the impossibility of ascertaining the users of the work, in relation to broadcasting and so-called "mechanical" recording and reproduction of works of music on phonograms. It was only later, and then to a lesser extent than was the case for works of music, that collecting societies were created to deal with literature, fine arts and photography as well as the protection of the rights of performing artists and the producers of phonograms.

The respective national societies dealing with the exploitation of works are associated by reciprocal agreements. Each society within its own area also administers those rights which are under the care of fraternal societies abroad, accounting for the income received separately. The societies are organized through the Confédération internationale des sociétiés d'auteurs et compositeurs (CISAC). International cooperation is particularly close between the societies working in the area of enforcing the mechanical reproduction

rights of works of music under participation of the Bureau international des sociétés gérant les droits d'enregistrement et de reproduction mécanique (BIEM).

3. *The Protected Objects*

(a) Authors and their successors in law (see BC, Art. 2(6) and UCC, Art. I) enjoy the protection of all those works which are capable of protection. The Berne Convention characterizes these generally as "literary and artistic works" (see BC title, → preamble and Art. 2). In Art. 2(1) it is further explained that "every production in the ... scientific ... domain" is also included. The Universal Copyright Convention also protects "literary, scientific and artistic works" (UCC, preamble and Art. I).

The Universal Copyright Convention lists, as examples and not as an exclusive list of protected works, "writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture" (Art. I). However, the contracting States are not committed, for example, to affording protection to photographic works or works of applied art (disputable, but see UCC, Art. IV(3)) or to architectural works.

This restriction does not apply to the Berne Convention which contains a considerably more extensive list of examples. It includes "books, pamphlets and other writings; lectures, addresses, sermons ..,; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works ...; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works ...; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science" (BC, Art. 2(1)).

In addition the following may be added, without prejudice to the copyright in the original or collected works: "translations, adaptations, arrangements or music and other alterations of a literary or artistic work" (BC, Art. 2(3)), as well as "collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations" (BC, Art. 2(5)).

(b) Protected scientific works are, in particular, scientific writings and speeches, scientific films and photographs, and those scientific objects referred to at the end of Art. 2(1) of the Berne Convention.

However, the protected elements of a scientific work are only the outer linguistic or representational forms along with the work's structure and pattern, and not the intellectual ideas, knowledge, theories and hypotheses. Fundamentally, the latter may be communicated and described by anyone. The still rudimentary protection of scientific discoveries is not the subject of the international copyright Conventions (see section 4(c) *infra*).

4. *Limits and Cognate Subjects*

(a) The copyright protection of literary and artistic works is distinguished from related rights (neighbouring rights, *droits voisins*). The international practice is to include in the latter the rights of performers, producers of phonograms and broadcasting organizations. The international protection of these is the object of a series of specific international agreements (see section F *infra*).

The related rights accord with copyright in the protection of the results of artistic efforts. However, copyright and the related rights differ when the nature of the artistic effort is examined. Artistic and literary works are the end-products of creative efforts whereas performers, as a rule, merely reproduce or interpret the work of someone else. Similarly, the activities of the producers of phonograms and broadcasting organizations facilitate only the appreciation of the works of authors.

(b) The protection of literary and artistic works must also be distinguished from the protection of industrial property (→ Industrial Property, International Protection). This includes patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source and appellations of origin, and the repression of unfair competition. The closest point of contact between the protection of literary and artistic work and that of industrial property is in the area of industrial design. Here copyright protection of works of applied art competes with the industrial property protection of industrial design. The Berne Convention takes this possibility of double protection into account in Art. 2(7).

(c) Scientific discoveries as such are protected neither by copyright nor by patent. For nearly a century now, attempts have been made to create a special *droit des savants*. The results of these efforts in a few States have either taken the form of something like the law of patents (as is the case in Spain) or the system of the socialist inventor's certificate (as in the Soviet Union). Thus, the Geneva Treaty on the International Recording of Scientific Discoveries of March 3, 1978, which has not yet entered into force, fits more easily into the system of industrial or related intellectual property protection than into the system protecting literary and artistic works.

(d) On the other hand, the protection of folklore and cultural heritage, of particular importance to the developing States, belongs with the protection of literary and artistic works. One of the characteristics of works of folklore is the widespread difficulty of discovering their authors. The Berne Convention in Art. 15(4) takes this difficulty into account by empowering member countries "to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union".

The most important concerns behind the protection of cultural heritage are not satisfied by the international instruments of copyright protection presently in force, for all these instruments limit the term of protection.

D. Protection under the Conventions

1. Aims of Protection

The main premises on which the protection of literary and artistic works rests under the Berne and Universal Copyright Conventions are the principle of territoriality (under which domestic regulation of copyright is always restricted to having effect only within the State), the variety of domestic regulations of copyright, and the rules regarding → aliens which are contained in all national legislation on copyright. In principle, these premises have not changed since the Conventions' coming into existence.

The Berne and Universal Copyright Conventions leave the principle of territoriality untouched. On the other hand, as far as the relations between the member countries and contracting States are concerned, they aim to overcome the discriminations resulting from the national rules relating to aliens (cf. → Aliens, Property) and, as is said in the Berne Convention's preamble, "to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works".

2. The Applicability of the Conventions

The applicability of the Conventions is not only determined by the kind of protected work (see section C.3 *supra*) but also by whether or not it belongs under the Conventions. The term often used is the protection's "point of attachment".

As a basic rule, protection is accorded to all the works of an author who belongs to a member country or contracting State, and all works by foreign authors first published in a member country or contracting State (BC, Art. 3; UCC, Art. II). Further special rules bearing on the protection's "point of attachment" concern cinematographic works and works of architecture, works by authors who have their residence or domicile in a member country or contracting State, as well as works created by → refugees and → stateless persons. The Berne Convention also gives protection to works first published not only in a member country of the Union but also simultaneously or up to 30 days previously in a non-member country (Art. 3(1) and (4), Art. 4).

3. Basic Principles of the Conventions

(a) The member countries of the Berne Union and the contracting States to the Universal Copyright Convention are bound under international law to afford adequate protection to all those works to which the Conventions are applicable. At the same time, the Conventions contain rules on private law rights bearing on copyright which are sufficiently precise that they are directly applicable within States – insofar as the direct application is possible under the respective national rules governing the transformation of international legal norms into national law (→ International Law in Municipal Law: Treaties). There are also other provisions of this kind which require additional national legislation to become effective.

(b) The guiding principle of protection in both Conventions is that of national treatment, i.e. the

treatment of foreign works protected under the Conventions equal to that afforded to domestic works (BC, Art. 5(1); UCC, Art. II). The regulation of this principle is sufficiently precise that it can be directly applied.

Moreover, both Conventions also guarantee, mostly in the form of direct applicability, particular rights (so-called minimum rights) which can be claimed for works protected under the Conventions, even if the national law makes no such provision for its own domestic works. However, since in principle no State is prepared to afford greater protection to foreign works than it does its own domestic works, these particular rights contained in the Conventions have led to a general harmonization in the level of protection afforded in member countries and contracting States. However, the provisions in the Conventions allowing the member countries and contracting States opportunities to place legislative limits on the rights contained in the Conventions (see section C.1(b) *supra*), have meant that considerable room remains for individual solutions to problems.

The list of particular rights in the Berne Convention has expanded with each revision conference and is more exhaustive than the equivalent list in the UCC. Both Conventions comprise: the right of translation (BC, Art. 8; UCC, Art. V(1)), the right of reproduction (BC, Art. 9; UCC, Art. IV^{bis}(1)), the right of public performance (BC, Art. 11; UCC, Art. IV^{bis}(1)), the right of broadcasting (BC, Art. 11bis; UCC, Art. IV^{bis}(1)), and the right of adaptation (BC, Art. 12; UCC, Art. IV^{bis}(1)). Expressly regulated only in the Berne Convention is the moral right (Art. 6bis), the right of public recitation (Art. 11ter, within the UCC, Art. IV^{bis}(1), comprised in the right of public performance), cinematographic rights (Arts. 14, 14bis) and the art proceeds right (Art. 14ter). It is true that Art. IV^{bis} of the UCC contains a general provision in which the rights of the author under the Convention "include the basic rights ensuring the author's economic interests". However, it has been a matter of contention whether Art. IV^{bis} sets down rights specially granted by the Convention or simply an obligation on the part of the contracting States.

(c) The law contained in the Conventions only regulates international protection. The national treatment principle and the specially granted rights under the UCC thus only apply *vis-à-vis* the protection of a work in those member States in which the author is not a national and where the work has not been first published (cf. UCC, Art. II(1), (2)). In the member State of which the author is a national or where the respective work has first been published protection is guided only by the rules of this State's national law. The same principle fundamentally governs the Berne Convention: The protection in a work's country of origin is decided exclusively in terms of the country's own domestic law (BC, Art. 5(3)). The law of the Convention only comes into play where protection in other member countries is concerned (BC, Art. 5(1)). The country of origin for unpublished works and works first published in non-member countries is the member country to which the author belongs. Where the work first has been published in a member country, this is the country of origin (BC, Art. 5(4) (a) and (b)).

(d) One of the major achievements of the Berne Convention is the principle contained in Art. 5(2): "The enjoyment and the exercise of these rights [i.e. those granted by the Convention] shall not be subject to any formality", such as registration or deposit of a copy of the work.

Under the UCC (Art. III(4)), it is only with respect to unpublished works that contracting States are obligated to forego formalities. Where published works are concerned, the observation of formalities may be laid down, as is particularly the case in the United States. The Convention nevertheless contains an important relief from this burden:

> "Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities ... 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 ..." (UCC, Art. III(1); cf. → Emblems, Internationally Protected).

(e) An addition to and a restriction of the principle of national treatment contained in the Berne and the Universal Copyright Conventions concerns the question of the term of copyright protection. Under the Berne Convention it must last at least for the life of the author and 50 years after his or her death (BC, Art. 7(1)). Under the UCC, the term is the life of the author and 25 years after his death or, under certain conditions, 25 years from the date of first publication of a work or from its registration prior to publication (UCC, Art. IV(2) (a) and (b)).

A restriction of the national treatment principle is contained in the rules concerning the comparison of the terms of protection. It is true that the term is fixed fundamentally by reference to the legislation of the country or State where protection is claimed. However, the term shall not exceed the term fixed in the country of origin of the work (BC, Art. 7(8)). According to the Universal Copyright Convention (Art. IV(4)) no contracting State is 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 by the law of the contracting State of which the author is a national (in the case of unpublished works) or by the law of the contracting State in which the work has been first published (in the case of published works).

4. Special Treatment for Developing States

In a protocol to the text of the Convention adopted at the Berne Union's Stockholm Revision Conference of 1967, the developing States succeeded in attaining far-reaching restrictions to the protection afforded under the Convention unilaterally in their own favour. The opposition within the developed States was such that the substantive rules of the Stockholm version of the Berne Convention (Arts. 1 to 21) and the Protocol dealing with the developing States could not enter into force. The result was a serious crisis in the régime of international copyright, which proved capable of resolution, however, at the Paris Revision Conference of 1971. In an annex to the Paris version of the Convention text, and in Art. V^{bis}, V^{ter} and V^{quater} of the Universal Copyright Convention, which was revised at the same time, moderately preferential terms were accorded the developing States which were also deemed acceptable by the developed States.

E. Organs and Administration

The highest organ in the Berne Union is the Assembly of Member Countries, which, *inter alia*, gives directions concerning the preparation of revision conferences, determines the programme, elects the members of its Executive Committee, establishes committees of experts and working groups and supervises the administration. Since the fundamental changes in the regulation of the administrative structure of the Berne Union and the Paris Union for the Protection of Industrial Property brought about by the Stockholm Revision Conference of 1967, the International Bureau of the → World Intellectual Property Organization (WIPO) is charged with the administration of the Union.

An inter-governmental committee of representatives of 18 contracting States to the Universal Copyright Convention is responsible for all questions concerning this Convention and the preparation of revision conferences. The Copyright Department of the UNESCO acts in such cases as the Secretariat.

F. International Protection of Related Rights

The most important agreement is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the so-called Rome Convention) of October 26, 1961. The principles of protection followed by the Rome Convention are the same as those in the Berne and Universal Copyright Conventions, i.e. the principles of national treatment and the undertaking to guarantee special rights. The Rome Convention is, however, only in force for 23 States (see section A *supra*).

This weakness of the Rome Convention, together with the nearly world-wide prevalence of phonogram piracy led, on the invitation of UNESCO and WIPO, to the conclusion in Geneva on October 29, 1971 of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms. The Convention entered into force in 1973. As of January 1, 1982, it was binding on 32 States

including Australia, the Federal Republic of Germany, France, Great Britain, Italy, Japan and the United States. The protection which must be afforded under this agreement can also come under the law of unfair competition or criminal law.

Similarly wide-ranging protection possibilities, which can also be of an administrative nature, are presented in the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite which, again at the invitation of UNESCO and WIPO, was concluded in Brussels on May 21, 1974. Entering into force in 1979, this Convention protects broadcasting organizations (not authors) against the unauthorized retransmission of their signals transmitted via satellite (→ Pirate Broadcasting). As of January 1, 1982, only six States were bound by the Convention: the Federal Republic of Germany, Italy, Kenya, Mexico, Nicaragua and Yugoslavia.

The regional European Agreement on the Protection of Television Broadcasts of June 22, 1960 (with protocols of January 22, 1965, and January 4, 1974) is specifically intended for the protection of television broadcasts. As of January 1, 1982, it was binding on ten member States of the → Council of Europe, including the Federal Republic of Germany, France and Great Britain.

G. European Law

It contrast with the field of industrial property, until now there have only been modest initiatives towards a harmonization of European copyright laws. However, the provisions of the Treaty of March 25, 1957 creating the → European Economic Community (EEC), have in no small way been influential in determining the contents of the copyright law in the member States, the activities of the collecting societies (see section C.2(c) *supra*), and the law dealing with copyright contracts. Given the decisions of the → Court of Justice of the European Communities (CJEC), no possible doubt exists over the fundamental applicability of the provisions of the EEC Treaty in the area of the exploitation of literary and artistic works (→ European Law).

Thus, applicable to copyright (and neighbouring rights) contracts are the EEC Treaty's provisions on agreements restricting competition (Art. 85). With regard to the activities of the collecting societies, which in all cases enjoy a monopolistic position at least in fact, the provisions forbidding the misuse of a dominant market position apply (Art. 86). The provisions determining the free movement of goods and services (Arts. 30 to 36 and 59 to 66) have a wide, but as yet not fully understood importance *vis-à-vis* the content of copyright protection in the relations between the member States. The case law of the CJEC (and in particular the decision of January 20, 1981, Joined Cases 55 and 57/80, Musik-Vertrieb Membran GmbH and K-Tel International v. GEMA, ECR (1981) p. 147) has made it clear that Arts. 30 et seq. and 36 of the EEC Treaty are also applicable to copyright. This had already earlier been established for the rights of producers of phonograms (decision of June 8, 1971, Case 78/80, Deutsche Grammophon Gesellschaft v. Metro-SB-Großmärkte, ECR (1971) p. 487).

Under Art. 36 of the EEC Treaty, within the context of the relations between member States "prohibitions or restrictions on imports" are allowed under the Treaty which are "justified on grounds of ... the protection of industrial and commercial property". However, they "shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States". The CJEC has indicated that it interprets this rule to mean that although the EEC Treaty guarantees the existence of copyright and related rights in member States, abuses in the exercise of these rights can occur and thus offend the principles of the free movement of goods. Until now, the major identified abuse occurs when copyright claims of authors and the producers of phonograms are brought into play in an attempt to prevent or hinder the importation of phonograms from another member State where they were distributed by the author directly or with his consent. On the other hand, it was found that an assignee of the performing right in a cinematographic film in a member State could legally rely upon his right to prohibit the exhibition of that film in that State, without his authority, by means of cable diffusion if the film so exhibited was picked up and transmitted after being broadcast in another member State with the consent of the original owner of the right (decision of the CJEC of March 18, 1980, Case 62/79, Coditel v. Ciné Vog Films, ECR (1980) p. 881).

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MARITIME COOPERATION *see* International Maritime Organization; Inmarsat

MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS *see* International Organizations, Membership

METEOROLOGICAL COOPERATION, INTERNATIONAL *see* World Meteorological Organization

MIGRATION *see* Intergovernmental Committee for Migration; Migration Movements

NUCLEAR ACTIVITIES, INTERNATIONAL REGULATION *see* International Atomic Energy Agency; International Maritime Organization; Nuclear Research; Organisation for Economic Co-operation and Development, Nuclear Energy Agency

NUCLEAR ENERGY AGENCY *see* Organisation for Economic Co-operation and Development, Nuclear Energy Agency

OBSERVER STATUS IN INTERNATIONAL ORGANIZATIONS *see* International Organizations, Observer Status

OPEC FUND FOR INTERNATIONAL DEVELOPMENT

1. Background

In the words of its constituent Agreement signed on January 28, 1976, the OPEC Fund for International Development exists "to reinforce financial cooperation" between the member countries of the → Organization of Petroleum Exporting Countries (OPEC) and other → developing States "by providing financial support to assist the latter countries... in their economic and social development efforts" (→ Economic and Technical Aid).

The Fund was set up in the wake of the Conference of OPEC Sovereigns and Heads of State held in Algiers in March 1975, which reaffirmed "the natural solidarity" uniting "their countries with the other developing countries in their struggle to overcome under-development". The Conference called for measures "that will strengthen their cooperation with those countries". In a wider sense, however, the Fund is a culmination of OPEC members' aid programmes (→ Foreign Aid Agreements). These programmes extend back to the early 1960s, and now involve the commitment of some $7000 million annually to the development of the Third World.

At its inception, the Fund was conceived as a short-term facility. This was reflected in the institution's original title, "The OPEC Special

Fund". For the first four years of its existence, the Fund lacked legal personality. It existed only as an international account collectively owned and administered by OPEC's 13 member States, but not, however, as an account of the OPEC organization as such. In 1980, extensive amendments of the Agreement Establishing the Fund converted it into a permanent multilateral development agency possessing international legal personality and a strengthened institutional structure. It was as a result of this new legal status that the Fund concluded its own Headquarters Agreement with the Republic of Austria in April 1981.

Initially endowed with resources of $800 million, three replenishments since 1976 have boosted the total resources committed to the Fund to some $4000 million. The rapid evolution of the Fund may not yet be over: Substantial further increases in its resources are under consideration by the members.

2. *Operations*

To fulfil its objectives, the Fund is authorized to provide concessional loans to the governments of non-OPEC developing countries for balance-of-payments support and for the implementation of specific development projects and programmes (→ Loans, International; → International Law of Development). Although in principle all developing countries except OPEC members are eligible to benefit from this type of assistance (for which to date over $1600 million has been allocated), the Fund has a statutory duty to give priority to the less developed among such countries. The Fund is also empowered to provide financing to international agencies whose beneficiaries are developing countries (for which over $1075 million has been committed), and to finance technical assistance activities (so far some $90 million).

The Agreement Establishing the Fund does not purport to list exhaustively the purposes to which the Fund's resources may be allocated in the carrying out of its objectives. Thus, in addition to the described activities enumerated in the Agreement, the Fund also finances research activities which have a bearing on its aims.

Of the 13 bilateral and multilateral aid agencies and special accounts sponsored by OPEC members, the Fund is the only one in which all OPEC member countries participate exclusively. As such, it has an important further function: that of coordinating and consolidating members' respective aid efforts and, where appropriate, acting as an agent on behalf of member countries in their relations with other international financial institutions (→ Financial Institutions, Inter-Governmental).

3. *Membership, Structure and Decision-Making Process*

Membership in the Fund is restricted to OPEC members. A member may by notice to the Chairman of the Ministerial Council withdraw at any time from the Fund, but remains under an obligation to pay its *pro rata* share of commitments made by the Fund up to the date of its withdrawal.

The Fund has a simple structure, consisting of a Ministerial Council, a Governing Board, a Director-General and such staff as are necessary for the carrying out of its functions.

(a) The Ministerial Council

The Ministerial Council is the Fund's supreme authority. It is composed of members' ministers of finance or other senior authorized representatives. The Council has one ordinary annual meeting and such additional special meetings as may be required. A chairman, who is empowered to convene special meetings, is elected by the Council from among its members for a one–year term.

A quorum of two thirds of the members, provided they together contribute 70 per cent of the Fund's resources, is necessary for any meeting of the Council. Decisions of the Council, which unless otherwise specified are effective immediately, must be taken by the same majority as required for constituting a valid quorum.

The Ministerial Council issues policy guidelines to be followed by the Governing Board, approves replenishments of the Fund's resources, settles disputes between members if they cannot be resolved by the Governing Board, and appoints the Director-General. The Council is also empowered to adopt amendments to the Agreement Establishing the Fund. Nevertheless, the Agreement is entrenched: A special majority of three quarters of members contributing four

fifths of the contributions to the Fund is required for any amendments.

(b) The Governing Board

Subject to the directives issued by the Ministerial Council, the Governing Board is responsible for the conduct of the Fund's general operations. The Board consists of one representative and one alternate representative for each member of the Fund, who are nominated by their respective ministers of finance or other senior authorized officers.The Board meets every three months or as often as its work requires. A chairman is elected from among its members for a one-year term. He presides over meetings of the Board, calls such special meetings as may be necessary, and represents the Board before the Ministerial Council. As with the Council, a two-thirds majority of the members representing 70 per cent of the contributions to the Fund's resources is necessary both for constituting a quorum and for taking decisions at meetings of the Governing Board.

The functions of the Governing Board include laying down the policies for the utilization of the Fund's resources, issuing directives and regulations according to which the resources of the Fund are administered and disbursed, and approving assistance operations. The Board also approves the Fund's organizational chart and its personnel policies manual.

(c) The Director-General

The Director-General is appointed for a five-year period by the Ministerial Council. He is the legal representative of the Fund and its chief executive officer. The Director-General is assisted in the discharge of his duties by the Fund's staff. The number of staff has been kept to the necessary minimum, under the Ministerial Council's directive to avoid building up a new international bureaucracy and unnecessarily duplicating the work of existing agencies.

4. Activities

The Fund's loans have been granted thus far to 81 developing countries, and its grants have reached over 40 national and international organizations and research centres. In addition, the Fund has used part of its resources to help establish and finance such new agencies as the → International Fund for Agricultural Development and the Common Fund for Commodities (→ Commodities, Common Fund). This role has been played by the Fund as the agent of its members in their collective efforts to assist other developing countries in promoting the new → international economic order, including the establishment of new international financial institutions where developing countries play the major role.

5. Special Legal Problems

Before the Fund acquired legal personality, its loan agreements with eligible beneficiary countries were concluded in the name of the 13 members of the Fund, acting collectively and represented for that purpose by the Chairman of the Fund's Governing Committee (as it was then called). In May 1980, when the Fund was endowed by its members with international legal personality, it was authorized to substitute for the members as the lending party to such loan agreements. Substitution was effected by a simple exchange of letters with the borrowers concerned; subsequent loan agreements have been concluded in the name of the Fund.

The change also affected the Fund's legal relations with other international development institutions. During the first years of the Fund's existence for example, it acted only as a conduit for member's contributions to the International Fund for Agricultural Development. By contrast, a forthcoming substantial contribution to the resources of the Common Fund for Commodities will be made by and in the name of the Fund.

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

1. Definition

The Organisation for Economic Co-operation and Development (OECD) is an inter-governmental entity, which was formed by industrialized States, generally with market economies, and has its headquarters in Paris. Its overall aim is to promote sound economic growth in the member and non-member States, with particular emphasis on economic expansion in → developing States, as well as an increase in world trade generally. In 1961, the OECD was created as the reconstitution, on a world-wide basis, of the regional Organisation for European Economic Co-operation (OEEC; → Regional Cooperation and Organization: Western Europe; → Economic Communities and Groups). This expansion initially comprised Atlantic basin countries, like the United States and Canada. The adhesion of Japan (1964), Australia (1971), and New Zealand (1973) completed its non-European membership. Its European members are Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom; Yugoslavia is an associated member.

2. Origins

As a regional grouping, the OEEC was set up by the Convention for European Economic Co-operation of April 16, 1948 (UNTS, Vol. 888, p. 142), which became effective on the same date pursuant to its Art. 24(b) which provided for provisional application as from signature (→ Treaties, Conclusion and Entry into Force). It was to serve, in the first place, as distributor of financial aid made available under the Marshall Plan (June 5, 1947). That Plan, also known as the → European Recovery Programme, was the United States response to the challenge of Europe's huge post-war need for outside economic (and political) support. The Western zones of occupation in Germany shared in this beneficial effort from the outset through the intermediary of the American, British, and French → military governments (→ Germany, Occupation after World War II). In lieu of them, the Federal Republic of Germany became the 17th member of the OEEC on October 25, 1949.

The history of the OEEC consists of a series of reforms which transformed that body from one responding to its original calling in the immediate post-war period into a robust regional entity acting in pursuit of broader economic matters. First, it saved Europe from its "money muddle" (→ Monetary Law, International). The replacement of early intra-organizational payments and compensation agreements by the European Payments Union (EPU) was initiated by an agency of the United States Government, the Economic Cooperation Administration. The EPU Agreement of September 19, 1950 aimed at substituting European cooperation for reliance on American aid as the basis for a broader and more flexible payments system. It involved a multilateral clearing scheme among members which each month registered and settled the payments due in the mutual accounts of the central banks by cancelling the single residual claim between each government and the EPU (→ Clearing Agreements; → European Monetary Corporation).

On the advent of convertibility in Europe, indubitably a direct accomplishment of the EPU, it was replaced by the European Monetary Agreement (EMA) of August 5, 1955. That Agreement provided for short-term credit allocated in each case by a decision of the OEEC Council, whereas the comparable EPU aid mechanism had been automatic. The EMA operated with the aid of the → Bank for International Settlements in the framework of the multilateral system of settlements. It was terminated at the end of 1972.

The action of the OEEC for the liberalization of trade consisted essentially in the dismantling of

quantitative restrictions which hampered the intra-European intercourse of goods. By continuously adapting the trade requirements of the pertinent OEEC code, the organization was able to reach the point where 95 per cent of members' imports on private account were liberalized, a result equally attained *vis-à-vis* the dollar area. The OEEC-sponsored improvement of the members' economic situation in general, and of their balance of payments in particular, also permitted a reduction of restrictions on invisible transactions, i.e. services, tourist expenditures, payments of profits together with dividends, and related operations. This always occurred on the basis of OEEC Council acts, which were initially recommendations, but which were transformed into decisions by the adoption of a Code of Liberalisation for the domain in question. Using essentially the same technique of whittling down existing restrictions in the wake of periodic reviews, the liberalization of capital movements was likewise advanced to the point where a → code of conduct embodied obligations, and commitments subject to reservations, of member States (→ Capital Movements, International Regulation).

Another adaptation of the OEEC to the changing requirements of its members occurred in the operational fields of productivity, training and use of scientific and technical personnel, as well as nuclear energy (European Nuclear Energy Agency; → Organisation for Economic Co-operation and Development, Nuclear Energy Agency; →Nuclear Energy, Peaceful Use). Founded as an operational arm of the organization in 1953 by an OEEC Council Decision, the European Productivity Agency (EPA) attacked the problem of economic development from the technological angle. With sizable achievements in payments, trade, and invisible transactions already accomplished, progress in methodological and technical performance was then called for to expedite and intensify European recovery. Established along the same organizational lines as the EPA under the authority of the OEEC Council, the Office for Scientific and Technical Personnel (OSTP) was from 1958 the expression of the organization's desire to cope with Europe's shortage of qualified manpower. The EPA and the OSTP, as well as the European Nuclear Energy Agency, were operated as specialized committees comprising representatives of all member governments under the supremacy of the OEEC Council. In contrast, the → European Conference of Ministers of Transport (ECMT) has had its own Council of Ministers and a Committee of Deputies ever since its inception by a Protocol of October 17, 1953, though its staff is now administratively integrated into the secretariat of the OECD. Less long-lived was the Ministerial Committee for Agriculture and Food, which formed part of the OEEC; it did not survive the demise of the OEEC.

To consider the transformation of the OEEC into the OECD as a recognition that the objective of the first organization had been attained would not reflect the breadth and the importance of elements extraneous to the OEEC which contributed to its disappearance and to the establishment of the OECD. The beginning of the end of the OEEC was its hesitation to come out in 1958 with a concept for a general European → free trade area acceptable to the members of the → European Communities (EC) as well as to those countries which later became the contracting parties to the agreement setting up the → European Free Trade Association (EFTA). Also, the United States and Canada insisted on a more significant role for the organization in the field of development aid as a prerequisite of their adhesion following a pertinent reform of the OEEC's purposes (→ Economic and Technical Aid). At the outset, the OECD may have been seen as the institutional recognition of economic → interdependence between the highly industrialized States of the Atlantic basin. In the meantime, however, it has lost whatever regional quality it might have retained from its origins as a joint effort of an undoubtedly European grouping, the OEEC.

On December 14, 1960, the Protocol on the Revision of the OEEC Convention and the OECD Convention were signed (UNTS, Vol. 888, p. 180). The reconstitution of the OEEC as the OECD took effect on September 30, 1961, and the legal personality possessed by the first entity continues in the OECD (OECD Convention, Art. 15) as from that date. That provision confirms that the OECD is identical *ratione personae* with the OEEC and did not succeed to it (cf. → Inter-

national Organizations, Succession). *Ratione materiae*, however, continuity between the two organizations is only partial in view of the evolution in the tasks of the world-wide body.

3. *Aims and Functions*

The OEEC had accomplished more under pertinent acts of its Council than in the execution of specific provisions of its 1948 Convention. The drafters of the OECD Convention again defined the objectives of the transformed entity rather broadly and thus did not definitively place the new institution under precise terms of reference. The Convention calls for policies designed:

"(a) to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;

(b) to contribute to sound economic expansion in Member as well as non-member countries in the process of development; and

(c) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations." (Art. 1).

The Convention assigns to the OECD Council the prerogative of determining specific policies for implementation by the organization as the need arises. Considering the freedom of action ensuing from the eloquent generality of the Convention's terms, actions taken under that instrument as set forth in specific texts enacted by the supreme body of the OECD and implemented by subsidiary organs give guidance as to the politically and legally tangible objectives of the OECD. Accordingly, in its first phase from 1960/1961 to December 1973 the organization was primarily concerned with world-wide economic growth, full employment, the control of rising inflation and the emerging international monetary crisis. The second phase, beginning in 1974, was marked primarily by action and reaction related to the energy crisis in member and non-member States, in particular developing nations, without, of course, neglecting its constitutionally mandated concern for economic matters as they arose. The structure, notably the denomination of the subsidiary bodies, reflects the various objectives thus pursued.

4. *Structure*

The institutional equipment of the OECD comprises the elements of a "classic" intergovernmental entity (→ International Organizations, General Aspects). An assembly consisting of instructed representatives from all member States with plenary jurisdiction, the Council, is assisted by a restricted body, the Executive Committee, whose composition changes by rotation, and whose powers of assessment, surveillance and law-making are, in principle, subject to the authority of the Council, both being served by an → international secretariat under the monocratic responsibility of a Secretary-General. Equally, the unanimity rule as the basic precept of procedure confirms the OECD's attachment to traditional mechanisms of voting. Art. 6 of the OECD Convention admits exceptions from this rule and sets forth special cases in which it need not entail a → veto effect. However, that issue again requires a unanimous act of the Council, whose general tendency ever since 1960/1961 has been to reduce such exceptions where taken over from the OEEC, and to abstain from introducing additional ones. The gradual extinction of majority decisions inherited from the OEEC was accompanied by an avowed concentration of law-making power in the hands of the Council. This was true notably as regards budgetary items, to the extent that they had been transferred to subsidiary bodies (before the coming into force of the OECD Convention) or even to the Executive Committee. The Council meets in sessions of Ministers, usually once a year, and of Permanent Representatives, i.e. of the diplomatic dignitaries heading members' delegations to the OECD, generally at the ambassadorial level. Ministerial conferences, as the annual gatherings are called, are chaired by an elected presiding officer designated each year from among pertinent national ministers; sessions of Permanent Representatives are chaired by the Secretary-General. The Secretary-General's five-year term, renewable and renewed each time the case has arisen so far, provides ample means for guiding the body. Law-making (→ International Legislation) by the Council, and by the organization generally, has decreased since 1961, while the OECD's function as a forum of reflection and debate on economic policy has correspondingly gained breadth and

depth, though the task has been assumed to a considerable extent by subsidiary bodies.

The Executive Committee, originally consisting of seven, now of fourteen members, continues to serve as an institutional instrument for measuring the attitude of members *vis-à-vis* submissions of the subsidiary bodies before they come on the agenda of the Council, and, accordingly, is the proper context for achieving → consensus, or otherwise for shelving items unlikely to obtain unanimous support. A member State not represented on the Executive Committee may nonetheless take part in sessions dealing with topics more specifically affecting that State. The Executive Committee meets in special sessions in order to obtain consensus in cases where it is particularly difficult to secure. It also convenes a high-level group on commodities when availability and distribution of scarce raw materials are at stake (→ Commodities, International Regulation of Production and Trade) as well as a group on North-South economic issues (→ International Economic Order; → International Law of Development).

Subsidiary bodies of the OECD may be classified under three headings: those dealing with general, as a rule (macro-) economic topics; those concerned with sectorial economic subjects; and those operational services modelled structurally and functionally on the lines of the OECD Nuclear Energy Agency (OECD/NEA). An array of important bodies as of January 1, 1981 bears out this assessment. Those dealing with general economic topics were: the Economic Policy Committee (with six sub-committees and working parties, among them the particularly renowned Working Party No. 3 on Policies for the Promotion of Better International Payments Equilibrium); the Economic and Development Review Committee (which operates the periodic "country examination" of each member); the Trade Committee; the Committee for Energy Policy; the Committee on Capital Movements and Invisible Transactions; the Committee on Financial Markets; the Committee on International Investment and Multinational Enterprises (→ Foreign Investments; → Transnational Enterprises); the Payments Committee; the Committee on Fiscal Affairs; the Committee on Restrictive Business Practices (→ Antitrust Law, International); the Committee on Consumer Policy; the Development Assistance Committee; and the Environment Committee (→ Environment, International Protection).

Subsidiary bodies concerned with particular sectors included: the Tourism Committee; the Maritime Transport Committee (→ Maritime Law); the Committee for Agriculture; the Fisheries Committee (→ Fisheries, International Regulation); the Manpower and Social Affairs Committee; the Education Committee; the Industry Committee; and the Steel Committee.

Subsidiary bodies modelled on the OECD/NEA were: the Governing Board of the International Energy Agency; the Governing Board of the Centre for Educational Research and Innovation; the Committee for Scientific and Technological Policy; and the Steering Committee of the Programme of Co-operation in the Field of Road Research.

A significant structural achievement of the OECD is probably about to vanish: the restricted committees, surviving today mainly in the Committee for Capital Movements and Invisible Transactions. These committees enacted majority decisions and, under the Codes of Liberalisation, could ensure that the national representatives serving on them were chosen in view of their expertise and that they remained exempt from instructions by the government concerned in the exercise of their functions on those bodies.

The major prerogatives of the Secretary-General ensue from his dual function as monocratic head of the secretariat and presiding officer of the Council when it meets in sessions of Permanent Representatives. The former task entails his exclusive responsibility for the secretariat and its working, based on his equally exclusive power to give instructions to the staff. As presiding officer of the Council he not only serves as chairman but has a comprehensive *droit d'initiative* including the power to determine time, form and substance of whatever proposition might be tabled by the secretariat in any body of the OECD, at the request of the latter or of its executive. Finally, both his constitutional calling and a series of enactments by the Council confirming the constituent texts assign to the Secretary-General the legal and factual representation of the OECD in → international relations as well as in transactions under the municipal law of a State.

5. Activities

The first Ministerial Council in 1961 gave OECD members the target of increasing their combined national output by 50 per cent during the decade 1960–1970, an aim which was more than achieved. While at the same time continuing the Codes of Liberalisation of Current Invisible Operations and of Capital Movements with the pertinent procedural and substantive heritage of the OEEC, the Council established in 1962 the OECD Development Centre as an operational arm rendering services in its topical domain both to OECD members and to developing nations.

Due to its high level of government representatives, the Development Assistance Committee (DAC) is a policy-making and coordinating body. It adopted the first international recommendation for improving the terms and volume of aid to developing countries in 1965, and now periodically revises that admonition and reviews its implementation. Its 17 members comprise the main aid-giving nations which at the end of 1980 were Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Italy, Japan, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, the United States, and the Commission of the → European Economic Community. The DAC's reporting on and assessment of development trends, e.g. the 1966 report on the geographical distribution of financial flows to developing countries, carry weight and conviction.

In the remaining years of the 1960s, the OECD was noted for its endorsement of special preferences on exports from developing areas, which paved the way for the pertinent amendment (1967/1968) to the → General Agreement on Tariffs and Trade (1947). Another development was the recognition of governmental and intergovernmental science policy as a field of OECD action in 1968, together with the establishment of the Centre for Educational Research and Innovation as the pertinent operational agency of the OECD in the same year. The enunciation by the OECD Environment Committee of the "polluter pays" principle, which has since become a major though controversial precept regarding prevention of and compensation for damage ensuing from environmental pollution came in 1971 (→ Responsibility of States: Fault and Strict Liability). Finally, the OECD has contributed to the re-appraisal of international monetary relations set off by the emerging collapse of the Bretton Woods system (→ Bretton Woods Conference (1944); → International Monetary Fund; → International Bank for Reconstruction and Development), notably by reports and proposals from Working Party No. 3 of the Economic Policy Committee (on the balance-of-payments adjustment process, 1966) and the IMF-linked Group of Ten (1971–1973).

OECD's second phase began late in 1973. Ever since, facing the energy crisis has been a foremost preoccupation. The Ministerial Council on May 20, 1974 proclaimed the OECD Trade Pledge committing member governments to abstain from trade restrictions as an answer to balance-of-payments difficulties ensuing from the combined effect of oil price increases and other factors such as inflation and unemployment. The → declaration of May 20, 1974, has been renewed annually by the Council. By a decision of November 15, 1974, the Council set up the → International Energy Agency (IEA) within the framework of OECD. On November 18, 1974 the agreement governing the particulars of the Agency's purpose and operation was signed; the only OECD members which have not so far signed are Finland, France, Iceland and Portugal. Like the OECD Nuclear Energy Agency, the IEA has no legal personality of its own. Its topical and budgetary intra-organizational autonomy notwithstanding, it is an organ in a specific domain of the OECD, which alone has legal capacity under → international law and under any municipal law that may become applicable. Broadly speaking, the IEA's assignment is to cope with such future energy shortages as may ensue from decreasing oil supplies by preventive action (e.g. stock building) as well as by medium- and long-term planning.

Though initially sponsored by the United States, the OECD Financial Support Fund Agreement of April 9, 1975 failed to be ratified by that signatory and was never put into force. It was designed as a safety device of last resort for OECD members with oil-induced balance-of-payments inflections. Ambitiously endowed with

legal capacity and its own privileges, immunities and exemptions, the Fund was to have served as an intermediary in loan transactions inspired by IMF practice under facilities devoted to similar purposes, yet of less limited accessibility.

In 1975, the Ministerial Council adopted a declaration on relations with developing countries which paved the way for discussions of adjustments to meet the manifest needs of non-oil-producing developing States. On the basis of this enunciation of May 28, 1975, the OECD was associated with the work of the Conference for International Economic Co-operation in Paris (CIEC) from December 1975 to June 1976. On June 21, 1976, the Ministerial Council adopted guidelines for transnational enterprises combined with a declaration on international investment, renewed on June 13, 1979, the delegate for Turkey abstaining. Leaving aside a number of further statements by ministerial gatherings of the OECD Council, and of the IEA Governing Board, which ranged from a long-term energy cooperation programme to shipbuilding subsidies and from → transfrontier pollution to aid to Turkey, attention should also be drawn to the Trade Declaration of the Ministerial Council in June 1980. It was designed to replace the 1974 Trade Pledge, and was meant to be wider in scope than the latter, unlimited in time, and endowed with follow-up procedures. The OECD celebrated its 20th anniversary on December 15, 1980 with a meeting of the Ministerial Council.

6. OECD Law

The powers of the OECD which have legal relevance are the same as those which were available to the OEEC; the legal status of the organization, generally speaking, is also the same. Once it is accepted that, *ratione personae*, the OECD is identical with the OEEC, it is understandable that the OEEC's privileges and immunities have by and large devolved upon the OECD (→ International Organizations, Privileges and Immunities). Although nothing would have prevented the member States of the new venture from agreeing otherwise, the OECD Convention and Supplementary Protocol No. 2 to that Convention, make the legal capacity and the privileges and immunities of the OECD almost the same as those accorded to the OEEC. In remaining faithful to the legal position as it prevailed during the lifetime of OEEC, the Protocol provides for a system of privileges and immunities which is probably unique in the law of international organizations and which contains different sets of privileges and immunities for the OECD, its officials, its communications and the representatives of its members. Since the coming into force of its constituent instrument, the OECD has enjoyed: (a) in the territory of its original European members the legal capacity, privileges, exemptions and immunities provided for in Supplementary Protocol No. 1 to the OEEC Convention of 1948; (b) in the United States the legal capacity, privileges, exemptions and immunities provided for in Executive Order 10133 of June 27, 1950, with regard to the OEEC; and (c) in Canada, which, though equally associated to it, had not accorded any privileged status to the OEEC, and in the other member States having acceded to the OECD, such legal capacity, privileges, exemptions and immunities as have been provided for in agreements between their governments and OECD (→ Diplomatic Agents and Missions, Privileges and Immunities). It is, of course, understood that in non-member States the legal capacity, privileges, exemptions and immunities of the OECD depend on such arrangements as the governments concerned are willing to concede.

Relations with other international entities are governed by two kinds of instruments. The OECD has entered into agreements with inter-governmental organizations generally, as envisaged by Art. 5(c) of its Convention which does not specify the form such consensual arrangements may take. The participation of the European Communities and of EFTA ensues from distinct international acts. Recognizing that the foundering of the free trade area negotiations within the framework of the OEEC had entailed the establishment of two economic organizations in Western Europe, those responsible for the emergence of the OECD wanted to give equal standing to the European Communities and their institutional counterpart, EFTA, in the bodies of the reconstituted organization. As to the Communities, this was accomplished by Art. 13 of the OECD Convention which deals with representation of these entities in the OECD, and by Supplementary

Protocol No. 1 to that Convention, providing that such representation was to be determined in accordance with their constituent texts, and that the Commission is to take part in the work of the OECD, at the Council level as well as in subsidiary bodies. Participation of EFTA was ensured by a Ministerial Resolution of the future member States on July 23, 1960. Though not transformed into a treaty provision, this engagement is for the time being equally binding.

Under Art. 5(a) of the OECD Convention, decisions of the organization are binding on all the members. The members are thus obliged to engage in specific conduct, it being understood that the underlying decision has to be in line with the aims of the OECD, as stressed in the introductory passage of Art 5. While the OEEC Convention (Art. 26) permitted, in the case of non-compliance by a participating government, the other members to mutually agree "to continue their co-operation within the Organisation without that Member", the present Convention does not contain such a rule. It stands to reason, therefore, that a general means of redress against non-observance of obligations set forth in the Convention or in decisions thereunder is no longer available.

The binding effect of decisions is inter-governmental in scope. It affects States only, not their subjects (→ Individuals in International Law). A decision may, however, entail repercussions in municipal law having effect on residents, this frequently being the ultimate purpose of the enactment by the organization, as for example in the liberalization of current invisible operations and capital movements (→ International Law in Municipal Law: Law and Decisions of International Organizations and Courts). However, to attain that end, transformation of the decision at issue, in whole or in its relevant part, is required. Decisions of the OECD thus acknowledge the clear separation of public international law from the members' municipal law, and entail the same inter-governmental effect as inter-Statal agreements of the classic kind which similarly were not intended to and did not affect individuals and non-governmental corporate entities. The OECD Convention does not permit rendering decisions with a more extensive effect which would penetrate the relationship between member States and their respective subjects: "No decision shall be binding on any Member until it has complied with the requirements of its own constitutional procedures" (Art. 6(3)). Accordingly, it is for each government concerned to assess whether it may join at once, or whether the assent of its parliament or of other bodies is needed under municipal law. However, it remains to be settled whether a decision accepted by a member government would no longer bind it when it established thereafter that obligations assumed under that act of the organization would run counter to its constitution, as an explicit provision of the OECD Rules of Procedure (Rule 19(b)) keeps that question unresolved. Indubitably, a member may endorse a decision *ad referendum* because, for example, the representative concerned wants to secure more precise instructions from his government. In that case, approval takes effect once definitive action on the decision has been taken.

Occasionally, the OECD applies a method of law-making developed before 1960/1961, by endorsing the text and signature of inter-governmental agreements to be concluded among members, as for example in connection with the OECD Financial Support Fund Agreement by a decision of April 4, 1975. Under the Rules of Procedure, the acts of the Council approving "Agreements with its Members, non-member States, and international organisations" (Rule 19(a) (ii)) are equally considered as decisions, though, generally, they do not require any measure of implementation by the members not participating in the conclusion of the arrangements. Furthermore, when the Council sets forth communications to non-member States or to other inter-governmental entities, they are likewise classified as decisions.

Finally, when internal matters concerning the work of the OECD are at issue, they are resolved by decisions "which shall be known as Resolutions" (Rule 19(a) (iii)), e.g. nomination of committee members, or determination of the date, time and agenda of a meeting. Like resolutions, recommendations require unanimity. Yet they have lesser legal effect, as they "shall be submitted to the Members for consideration, in order that they may, if they consider it opportune, provide for their implementation" (Rule 19(b)).

Nonetheless, recommendations frequently have considerable political weight, and even States which are prepared to carry out an act of the Council prefer to consider it as a recommendation rather than as a decision. Indeed, more often than not, recommendations are rounded off by obligations to report to or inform the organization (→ Reporting Obligations in International Relations). This aspect, in conjunction with the rule that the position taken *vis-à-vis* a specific recommendation of OECD obliges a member to take the same, or at any rate not a contradictory, attitude in other inter-governmental bodies, distinguishes this category of acts from mere suggestions.

International control as an instrument for securing the application of law is a significant feature of inter-governmental organizations which are devoid of judicial organs having jurisdiction over the whole breadth of their functions. This is also the case with OECD. There is, however, an Appeals Board, an administrative tribunal similar to those in other organizations, which duly rounds off the safeguards destined to correct an administrative decision *vis-à-vis* an OECD staff member "inequitable to him or contrary to the terms of his appointment or..." to any other "applicable rules" (Staff Regulation 18(a) (ii); → Administrative Tribunals, Boards and Commissions in International Organizations). Moreover, the Tribunal which was set up by the Convention on the Establishment of Security Control in the Field of Nuclear Energy (1957) has the power to ensure in its narrow substantive domain the rule of law by judicial means. However, apart from these institutions, surveillance and assessment of members' conduct remain in the hands of political bodies whose members are under instructions from national governments appointing and displacing their representatives at their own volition.

7. An Interim Assessment

The law of the OEEC and the early years of the OECD developed a number of structural and functional elements, notably in the form of influential "Boards" responsible for the operation of the European Monetary Agreement and the Codes of Liberalisation, which applied topical expertise and the provisions of the instruments they were to implement rather than political criteria of appreciation. Generally speaking, the inverse is true today in the sense that the organization has experienced a process that has thinned its legal substance considerably. No doubt, to the extent that binding precepts of conduct continue to apply, the OECD and its members obey them. Yet it is true that they shy away from such rules of law whenever new initiatives occur in the organization. And, likewise, wherever legal precepts still prevail, they are increasingly dislocated, as for example with respect to the European Monetary Agreement, or decisions are replaced by statements of perhaps considerable political impact, yet lesser legal effect, if they have any binding character at all.

With a certain regularity, such replacement increasingly has taken the form of declarations or pledges, some of which have already been mentioned. Though they have no predetermined legal quality under the Convention and the Rules of Procedure, they need not necessarily be devoid of normative traits. It can be stated, however, that they are not decisions, resolutions, or recommendations as conceived by the written law of the organization. They may have in common with formal agreements the feature that they address themselves to governments individually rather than as members of the OECD, though they are meant to be the expression of a common political effort. Devoid of binding effect, however, they leave governments a margin of discretion as to the implementation of policies, which is limited only by their understanding of the common goal and the line of conduct imposed on them. Some observers conceive of this phenomenon as a wholesome diversification of conference diplomacy and a broadening of its techniques, while others deplore it as a loss of legal substance in the work of the organization. However, it must be remembered that law is only one limitation of national → sovereignty, one link of the members of an inter-governmental entity. Unless it is the decisive link whose softening and gradual reduction may affect the very life of such an organization, the political and economic interdependence of members can have equal weight and can counterbalance even a clearly visible thinning out of the body's legal procedure and substance.

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, NUCLEAR ENERGY AGENCY

The OECD Nuclear Energy Agency (NEA) is the continuation of the European Nuclear Energy Agency of the Organisation for European Economic Co-operation (OEEC) established by a Decision of the OEEC Council on December 17, 1957. It remained unaffected by the reform of the OEEC which led to the creation of the → Organisation for Economic Co-operation and Development in 1960/1961. From 1961, when the OECD's constituent instruments came into force, until 1972, it maintained its original title and functions as part of the OECD. In 1972, the NEA received its present name on the adhesion of Japan as the first non-European member State of the OECD participating in the body. It now comprises all the European OECD members together with Australia, Canada, Japan, and the United States.

The NEA has no legal personality of its own (→ International Organizations, General Aspects), but is rather the operational arm of the OECD for one of its specific spheres of action. The OECD alone has independent capacity under international law, and the municipal law of member States, as well as the law of other States, has recognized the OECD as the responsible body. Moreover, the jurisdiction of the OECD Council remains unaffected by the establishment of the NEA. The NEA has limited intra-organizational autonomy, as acknowledged, for example, by distinct topical appropriations in the OECD budget, its own procedural usages (if not rules), and a separate staff establishment (85 persons at the end of 1980) which, however, is subject to OECD Staff Regulations and Rules. Accordingly, it seems quite fitting that the NEA Statute was enacted by the OECD Council as a Decision, whereas a number of legislative initiatives which transcended the powers entrusted to that body by the OECD Convention required parliamentary assent in member States, or took the form of agreements concluded under the aegis of the OECD.

Under the authority of the OECD Council, the tasks assigned to the NEA are carried out by the Steering Committee for Nuclear Energy, and by such subsidiary bodies as the Steering Committee has chosen to set up, together with the NEA Secretariat. The Steering Committee is composed of instructed representatives from all participating OECD member States, and from the Commission of the → European Communities, which takes part in the NEA's activities under Supplementary Protocol No. 1 to the OECD Convention. The Steering Committee's function is to promote cooperation between member governments on the safety and regulatory aspects of nuclear development, and on assessing the future role of nuclear energy as a contributor to economic progress (→ Nuclear Energy, Peaceful Use; → Nuclear Research). This is to be achieved by setting up international research and development programmes, and undertakings jointly organized and operated by the OECD member States (→ International Law of Cooperation); encouraging harmonization of governments' regulatory policies and practices in the nuclear field, with particular reference to the safety of nuclear installations, protection of humans against ionizing radiation and preser-

vation of the environment (→ Environment, International Protection), radioactive waste management (→ Waste Disposal), and nuclear third-party liability and insurance (→ Responsibility of States: General Principles; → Responsibility of States: Fault and Strict Liability); keeping under review the technical and economic characteristics of nuclear power growth and of the nuclear fuel cycle, and assessing demand and supply for the different phases of the nuclear fuel cycle and the potential future contribution of nuclear power to overall energy demand; and finally, developing exchanges of scientific and technical information on nuclear energy, particularly through participation in common services.

Comparing this ambitious catalogue of functional assignments with the NEA's activities reveals impressive achievements. However, viewed from the perspective of its legal significance, the Agency's evolution of policy has tended increasingly to favour initiatives of a managerial, consultative and hortatory character rather than contractual arrangements or operational projects with their own institutional set-up. Examples of the latter, however, were the Security Control Convention of December 20, 1957 and the → European Company for the Chemical Processing of Irradiated Fuels (Eurochemic), established by a treaty signed on the same day. Even where time-tested cooperation has ensued from the more recent NEA programmes, a lesser degree of internationalization and specifically legal significance seems to be their decisive trait as compared with the original concept. Eurochemic ceased reprocessing work in 1974, but its duration has been extended until 1982 to enable this "joint stock company" (Eurochemic Statute, Art. 1) to meet its remaining legal obligations resulting, for example, from the high-level nuclear fuel waste it produced at the Eurochemic plant in Mol, Belgium. Eurochemic is subject only subsidiarily to Belgian law, primarily through a Convention and Statute requiring ratification. Its example has not been followed in the establishment of the two later NEA → joint undertakings in Halden, Norway and Winfrith, Great Britain, both reactors and installations there having remained the property of the national institutions which assumed the obligation to build and operate the plants under agreements with the national authorities of the OECD member States concerned. The Winfrith High Temperature Gas Cooled Reactor Project (DRAGON) came to an end on March 31, 1976, as participants failed to agree on the terms for an extension, while the Halden Boiling Water Reactor will continue until the end of 1984, to operate under the eighth agreement governing its management, use and financing.

In the field of scientific cooperation too, the NEA now follows a more functional line. Some topics have been entrusted to expert bodies, such as the NEA Data Bank operated at the French national nuclear establishment in Saclay under the aegis of the NEA Committees on Reactor Physics and for Nuclear Data. This work since 1978, has continued the efforts of the Computer Program Library located at the research center in Ispra, Italy, sponsored by the European Atomic Energy Commission (→ European Atomic Energy Community), and of the Neutron Data Compilation Centre. Following NEA practice, the OECD concluded the agreements with the national and international authorities required for the operation of the project as endorsed by the OECD Council. The same procedure was followed in setting up the joint international food irradiation project of the NEA, the → Food and Agriculture Organization of the United Nations, and the → International Atomic Energy Agency, a programme which is carried out under the aegis of an expert body from these international organizations at the Federal Research Centre for Nutrition at Karlsruhe in the Federal Republic of Germany. It is operated at no cost at all to NEA – a generosity mentioned in each annual report of the Agency. A main feature of the NEA's action in the field of nuclear science is the fostering and organization of symposia in conjunction with other international and national bodies involved in the field.

As to radiation protection, the NEA has secured the constant adaptation of OECD decisions in the light of radiation protection norms developed by the International Commission on Radiological Protection (ICRP). To that end, the Steering Committee for Nuclear Energy has been given the power to amend from time to time pertinent OECD enactments with a view to harmonizing them with the most recent

requirements of the ICRP. The NEA has also set up a system of supervision and emergency warning in cases of undue increase in environmental radioactivity, and OECD Council decisions regarding that eventuality are geared to securing the cooperation of national authorities in member States.

The NEA has sponsored and still administers the execution of two international Conventions, the Paris Convention on Third Party Liability in the Field of Nuclear Energy of July 29, 1960 and the Brussels Convention of January 28, 1964 supplementary to it. Both texts were revised in 1980 with a view to updating them to take account of developments in the industry and to increase the amounts of compensation in the light of the change in price levels since they were first established. The NEA also made important contributions to the Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of December 17, 1971, a genuinely pioneer effort entailing incisive changes in the municipal legislation of the signatory States. In the context of nuclear safety, radioactive waste management has been a major concern of the Agency both prior to and since the adoption of the 1977 OECD Council Decision establishing the Multilateral Consultation and Surveillance Mechanism regarding the dumping into the sea of radioactive waste (→ Marine Environment, Protection and Preservation).

The institutional devices required under the 1957 Security Control Convention are available to the NEA, although the supervisory system under the Convention has yet to be put to the test; Art. 16 of the Convention envisaged that Euratom would exercise the NEA's prerogatives in this respect throughout the States which were both members of Euratom and participating in the NEA.

The NEA benefits from whatever relations the OECD establishes with other international organizations. The NEA's long standing cooperation with Euratom and the IAEA are noteworthy here; the legal techniques employed to that end range from initial bilateral agreements to unilateral intra-organizational enactments (decisions, resolutions, recommendations) setting forth the details of cooperation in each subject concerned.

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ORGANISATION FOR EUROPEAN ECONOMIC CO-OPERATION (OEEC) *see* Organisation for Economic Co-operation and Development

ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES

1. Historical Background

The first step towards the establishment of the Organization of the Petroleum Exporting Countries (OPEC) was taken in 1959, following a unilateral reduction by the major oil companies of the posted prices of Venezuelan and Middle East crude oil. The representatives of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela met informally in Cairo on the occasion of the First Arab Petroleum Congress to explore means of cooperation in the face of growing disorder in international markets (→ Commodities, International Regulation of Production and Trade). The only result of this first meeting, however, was an agreement for mutual consultation should prices continue to fall.

In August of the following year, the oil companies announced a further reduction in Middle East posted prices. The Government of Iraq took the initiative and convened a conference in Baghdad in September 1960 to which delegations from Iran, Kuwait, Saudi Arabia and Venezuela were invited. Calling on the oil companies "to restore present prices to the levels prevailing before the reductions" and "to enter into consultation" with producing countries before effecting price modifications, it was this conference that decided "to form a permanent

Organization called the Organization of the Petroleum Exporting Countries". Its "principal aim" was to be "the unification of petroleum policies... and the determination of the best means for safeguarding the interests of Member Countries individually and collectively" (Agreement concerning the Creation of the Organization of Petroleum Exporting Countries (OPEC) of September 14, 1960, UNTS, Vol. 443, p. 248). OPEC's Statute came into application on May 1, 1965. It has since been amended several times.

The main preoccupation of OPEC member States during the first decade of the organization's existence was to increase tax revenues from oil → concessions operated on their territories by foreign companies. But with the increasing political strength of member countries and of Third World countries in general during the 1960s, the concern for taxation gave way towards the end of the decade to demands for equity participation in the concessions (OPEC 1968 Declaratory Statement of Petroleum Policy). The realization in large part of these demands by the early 1970s signalled a breakthrough in the nature of the member countries' relationship with the major transnational oil companies. The member countries had gained a say in the management of operations in their territories.

Crude oil pricing power fell into OPEC hands at the end of 1973. This development followed stalemated → negotiations with the oil companies on the level of posted prices, as well as the fourth instance of → armed conflict between → Israel and the Arab States and the ensuing → embargoes. The participation arrangements were in quick order superseded in most member countries by nationalization of the industry (→ Expropriation and Nationalization; → Libya-Oil Companies Arbitration). Since then, the overriding concern of OPEC has been the establishment of crude oil market prices. However, the prevailing multi-tier pricing system underlines the fact that OPEC is primarily a forum for → consultation and negotiation which, while enjoying international legal personality, possesses no supranational powers (→ International Organizations, General Aspects). Moreover, having had, until very recently, no role in the petroleum production policies of its members or in using production levels to maintain targeted prices, OPEC's characterization as a "cartel" was not accurate. (→ Antitrust Law, International).

2. Membership

(a) Composition

Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, OPEC's five founding members, admitted Qatar to membership in the organization four months after the seminal September 1960 Conference. Indonesia and Libya joined in 1962. In December 1967, Abu Dhabi (whose membership was transferred to the United Arab Emirates in 1974) became a member, with Algeria joining in July of 1969. Two years later, Nigeria became OPEC's eleventh member. In November 1973, Ecuador was admitted to membership, while Gabon became an associate member. When Gabon attained full membership in July 1975, OPEC acquired its present complement of 13 full member States (→ International Organizations, Membership).

(b) Types of membership

As implied above, there are three possible types of OPEC membership: founder, full and associate membership. The only difference between founder and full membership is that the founder members, which are also full members, may → veto membership applications. In the words of the OPEC Statute, a State may become a member if accepted by a majority of three quarters of full members "including the concurrent vote of all Founder Members". The failure of Trinidad and Tobago's attempt to join OPEC was due to the exercise of this veto power by one of the founder members. The difference between associate membership and founder or full membership is that associate members are precluded from voting at meetings of the Conference, the Board of Governors and at Consultative Meetings, though they may be invited to attend them (→ Voting Rules in International Conferences and Organizations).

(c) Membership eligibility

OPEC's Statute lays down the eligibility criteria for membership. Art. 7 of the Statute provides that membership, both full and associate, is open

to "any... country with a substantial net export of crude petroleum... [and] fundamentally similar interests to those of Member Countries". The criterion of substantial net oil exports has never been authoritatively quantified. It may in any case have to be understood in relative terms, particularly in relation to the economy of the country concerned, as the net oil exports of two OPEC members each account for only a very small proportion (about 0.5 per cent) of total world exports. The criterion of fundamental similarity of interests with member countries has likewise never been formally elucidated, and perhaps cannot be specified in any detail. It is generally understood, however, that prospective members should share the interests of member countries as → developing States dependent for their economic well-being on the export of raw materials. An industrialized developed country may thus be assumed at this stage to be ineligible for OPEC membership under this criterion.

(*d*) *Withdrawal*

Any OPEC member may withdraw from the organization provided it gives notice of its intention of doing so to the Conference. Under Art. 8 of the Statute, such notice takes effect at the beginning of the next calendar year after the date of its receipt by the Conference, subject to the withdrawing member's having fulfilled the financial obligations arising out of its membership. No OPEC member has ever availed itself of this right of withdrawal.

3. Structure and Decision-Making Process

The organization has three main organs, the Conference, the Board of Governors, and the Secretariat. The Economic Commission was established by the Conference as a specialized organ of OPEC.

An OPEC summit, consisting of the "Sovereigns and Heads of State" of the member countries convened in March 1975 for the first time and issued a "Solemn Declaration" embodying a number of broad policy directives. A second OPEC summit was scheduled to meet in November 1980, but was postponed due to the outbreak of military hostilities between two members (Iran and Iraq). A "Declaration" and a "Plan of Action" were to be issued by this second summit. It may, however, be premature to view the summit as a further organ of the organization, displacing the Conference as OPEC's supreme authority.

(*a*) *The Conference*

The Conference consists of members' delegations usually headed by ministers of oil and energy or ministers of equivalent rank. While the Conference has two ordinary annual meetings, an extraordinary meeting may be and often is convened by the Secretary-General, after consultation with the Conference president and approval by a simple majority of member countries. A president is elected from among the heads of delegations for the duration of each meeting of the Conference, and he retains his title until the next meeting. The president is empowered to convene consultative meetings of the heads of delegations when the Conference is not in session. Such consultative meetings may pass decisions or recommendations to be approved by the next Conference.

A quorum of three quarters of member countries is necessary for holding a Conference. Each full member is allocated one vote. Except for decisions on membership applications and procedural matters, all decisions (called "resolutions") of the Conference require a unanimous vote. The proviso concerning "procedural matters" appears, moreover, to be nugatory, as no attempt has been made to define which matters are procedural. The Conference's unanimity rule was formulated at a time when there were only five OPEC members. With increased membership, the rule has on occasion produced deadlocks. On the other hand, by ensuring that no member will be constrained to abide by a policy it dislikes, the rule may have contributed to the viability of the organization.

Conference resolutions become effective 30 days after the conclusion of the meeting or after such period as the Conference may decide unless the Secretariat receives notification to the contrary within that period from a member country. No Conference resolution has ever been thus annulled.

If a full member is absent from a Conference meeting, resolutions made at the meeting become effective unless the Secretariat receives a

→ notification to the contrary from the said member at least ten days before the date fixed for publication of the resolutions. If the Conference so decides, a non-member country may be invited to attend the Conference as an observer (→ International Organizations, Observer Status).

The Conference formulates the general policy of the organization and determines the appropriate ways and means of its implementation, decides on applications for OPEC membership, passes on the budget of the organization, approves amendments to OPEC's Statute and appoints the organization's Secretary-General and Deputy Secretary-General. In addition, all matters not expressly assigned to OPEC's other organs fall within the competence of the Conference.

(*b*) *The Board of Governors*

The Board of Governors is composed of governors nominated by member countries, subject to Conference confirmation, for a term of two years. A quorum of two thirds of the governors is necessary for meetings of the Board, which are normally held twice yearly. Each governor has one vote and decisions of the Board are taken by simple majority. A chairman of the Board is appointed from among the governors on a rotation basis by the Conference for a period of one year. He presides over meetings of the Board and represents it at conferences and consultative meetings.

The functions of the Board of Governors include directing the management of the affairs of the organization and implementing Conference resolutions, submitting reports and making recommendations on OPEC affairs to the Conference, drawing up the organization's budget for each calendar year and submitting it to the Conference for approval, approving the appointment of Secretariat directors of divisions and heads of departments upon their nomination by member countries (with due regard to the recommendations of the Secretary-General), and convening extraordinary meetings of the Conference.

(*c*) *The Secretariat*

The Secretariat, currently based in Vienna, carries out the executive functions of the organization in accordance with the OPEC Statute and the directions of the Conference and the Board of Governors. It consists of the Secretary-General, the Deputy Secretary-General, and, according to the Statute, "such staff as may be required". The Secretary-General, who is OPEC's legally authorized representative and the Secretariat's chief officer, is appointed by the Conference on a rotation basis from among qualified member country nationals for a term of two years. In the discharge of his duties, he is assisted by a Division of Research comprising Departments for Energy Studies, Economics and Finance, Data Services and specialist units, which conduct a continuous programme of research for the benefit of member countries, with particular emphasis on energy and related matters; by a Personnel and Administration Department; a Public Information Department; a Legal Affairs Unit; and OPEC's recently-established news agency, OPECNA. Altogether, the Secretariat has at present some 190 staff members who, as the OPEC Statute emphasizes, are "international employees with an exclusively international character" (→ Civil Service, International).

(*d*) *The Economic Commission*

The OPEC Economic Commission was set up by the Conference in 1964 as a permanent and specialized organ of the organization, pursuant to Art. 37 of OPEC's original Statute. The Commission, which operates within the general framework of the Secretariat, consists of the Commission Board (comprising national representatives, the Deputy Secretary-General, and the Head of OPEC's Research Division, acting *ex officio* as Commission Coordinator) and the Commission staff. The Commission, whose Board meets twice a year and is answerable to the Conference, is entrusted with the study of economic and other factors affecting petroleum prices and their structure; it formulates and submits related recommendations to the Conference.

4. *Activities*

Although OPEC's statutory objectives relate primarily to the defence of the economic interest of its members as exporters of petroleum, the growing importance of those members, both as oil exporters and as owners of substantial financial assets, has led the organization gradually to

assume a much larger role. In particular, the desire of many members to use their newly-acquired gains for the benefit of the Third World as a whole, and the expectations – and demands – of non-OPEC developing States, have motivated the organization to take initiatives in areas unrelated to the pricing of oil. The most important such initiative was the creation in January 1976 of the OPEC Special Fund, which was converted in May 1980 into the → OPEC Fund for International Development. Other important initiatives now under consideration include the plans elaborated by OPEC's Ministerial Committee on Long-Term Strategy.

5. Special Legal Problems

In December 1978, an American trade union filed an action in a United States federal district court against OPEC and its members, challenging their crude oil price setting activities as a violation of United States antitrust laws. The trial judge dismissed the case on the grounds, *inter alia*, that the defendant States had → sovereign immunity from suit because the activities complained of were acts *jure imperii* and there had been no → waiver of immunity. Moreover, the plaintiff's had not been able to effect legal service on OPEC as an organization (International Association of Machinists and Aerospace Workers v. OPEC, 477 F. Supp. 553 (C.D. Cal. 1979)).

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PARIS CONVENTION (1883) *see* Industrial Property, International Protection

PARLIAMENTARY ASSEMBLIES, INTERNATIONAL

1. Notion; Origin

International parliamentary assemblies are organs of international organizations composed of parliamentarians. In a broader sense, the notion of international parliamentary assemblies could include more or less private international associations of parliamentarians (such as the → Inter-Parliamentary Union and the Latin American Parliament) or meetings of parliamentarians not based on the treaty establishing the international organization (such as the Assembly of → North Atlantic Treaty Organization (NATO) Parliamentarians). These, however, are not covered in this article although such organizations, especially the Inter-Parliamentary Union, founded in 1889, have had a certain influence in promoting the idea of an extension of parliamentary control to the field of foreign policy, a traditional domain of the executive branch. Rather, this article focuses on parliamentary assemblies of international organizations.

The first parliamentary assembly in the framework of an international organization was created by the treaty of May 5, 1949 establishing the → Council of Europe. The experience of World War II had strengthened the movement towards a unified Europe (→ European Unification) and led to the first concrete proposals for such a council. On March 17, 1948 the Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence (Brussels Treaty) was signed, but it did not include a parliamentary organ. This was created only after the Brussels Treaty Organisation had become the → Western European Union (WEU) upon the accession in 1954/1955 of the Federal Republic of Germany and Italy to the modified treaty. A Committee for the Study of European Unity installed by the WEU Council preferred a Franco-Belgian proposal for a parliamentary European Assembly to a British proposal for a purely inter-governmental Council of Ministers, and the Assembly was established in 1955. Other Western European organizations also followed the example set in the Statute of the Council of Europe and created parliamentary assemblies: the

Assembly of the → European Coal and Steel Community (ECSC) (1952) and the Consultative Interparliamentary Council (CIC) of Benelux (1955), which later became the parliamentary assembly of the → Benelux Economic Union. The structure of the → Nordic Council, established in 1952 and later laid down in the Helsinki Treaty of March 23, 1962 as amended in 1971 and 1974, was influenced by the Statute of the Council of Europe as well. In the framework of → Nordic cooperation, an additional independent Council of Ministers was created in 1971.

The treaties establishing the → European Communities (EC) speak only of the "Assembly", while the Statute of the Council of Europe speaks of the "Consultative Assembly". Reflecting these two organs' perception of their roles, they have changed their names (without changes in the treaties) to "European Parliament" (EP) and "Parliamentary Assembly of the Council of Europe"; these designations have been widely accepted, especially concerning the EP. The WEU Assembly describes its task as carrying out the parliamentary function arising from the application of the Brussels Treaty (Art. I of the Charter of the Assembly).

On October 25, 1979 the members of the Andean Group (→ Andean Common Market) signed the Treaty establishing the Andean Parliament. Although it has not yet entered into force, the idea of international parliamentary assemblies has now reached beyond Europe.

2. Composition

(a) Number of members; State representation

The number of members in international parliamentary assemblies differs considerably. The planned Andean Parliament will comprise 25 members, the CIC of Benelux has 49 members, the Assembly of the WEU 89, the Consultative Assembly of the Council of Europe 170, the EP 434, and the Nordic Council 78 (which, in addition, includes government representatives; as they have no voting rights (Helsinki Treaty, Art. 49, para. 1), they are not taken into consideration in the following account). The more members there are, the more possible it becomes to achieve a proportional representation of the peoples of the member States. But even in the EP, which now has twice as many members as before the direct elections of 1979, the six seats of Luxembourg are out of proportion to the 81 seats each of the four largest member States. While it is possible to have different political orientations represented in the EP, this will be difficult to achieve in the Andean Parliament with its five representatives per member State. The Andean Parliament is the only parliamentary organ with an equal number of representatives for each member State.

The difference concerning the number of members has had a certain influence on the parliamentary character of the work of these organs. The lack of proportion between the size of the member States and their representation shows that the principle of representation of the → States as such, although of different weight, still plays an important role in international organizations (→ International Organizations, General Aspects; cf. → States, Sovereign Equality). This principle as it applies to their parliamentary organs is an effective protection for the smaller States.

(b) Election or designation of members

At the present time, only the members of the EP are directly elected. Art. 2 of the Andean Parliament Treaty foresees direct and universal suffrage for election of the members, but the Additional Protocol regulating the procedure may be ratified only at the earliest ten years after the Treaty itself has entered into force.

Generally, the treaties providing for parliamentary assemblies prescribe that their members must be members of their respective national parliaments. On the initiative of the Consultative Assembly of the Council of Europe, the relevant article, Art. 25, of the Council's Statute has been changed twice on this matter: Until 1951, the → governments were empowered to appoint the members. Afterwards, this power was conferred on national parliaments. They now can elect the members or decide upon another procedure of appointment. The member governments can appoint additional members only when their parliaments are not in session and if their parliaments

have not laid down a procedure to cover the situation. In 1970, it was expressly provided that the members must be chosen from the national parliament.

Since, under Art. IX of the Brussels Treaty, the Assembly of the WEU is "composed of representatives of the Brussels Treaty Powers to the Consultative Assembly of the Council of Europe", the same procedure applies to members of the Assembly of the WEU. The members of the Nordic Council, the CIC and the Andean Parliament are elected by their national parliaments, as were also the members of the EP until 1979.

The Nordic Council, by Art. 47, para. 3 of the Helsinki Treaty, is the only organization that prescribes an adequate representation of different political opinions. In accordance with the Act concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage (Official Journal of the European Communities, No. L 278, October 8, 1976, p. 1) (Election Act), the EP was directly elected in 1979. Although a uniform procedure was foreseen in Art. 138(3) of the Treaty establishing the → European Economic Community, uniformity has not yet been wholly achieved. The number of concurrent members of national parliaments and EP has, however, decreased since to about one-quarter. In practice, there is a tendency towards proportional representation of the different political groups of the national parliaments within the national groups in the international assemblies. However, until 1969, there were no Italian Communists in any European parliamentary organ, although they represent about one-quarter of the Italian electorate. Direct suffrage in general may diminish this problem for minority groupings.

3. *Legal Status of Members*

(*a*) *Character of the mandate*

Under the treaties establishing the EC, the members of the EP are described as representatives of the peoples of the member States (ECSC Treaty, Art. 20; EEC Treaty, Art. 137; Treaty, establishing the → European Atomic Energy Community (Euratom), Art. 107). The Andean Parliament Treaty contains a similar provision (Art. 2). The EC's 1978 Election Act prescribes in Art. 4(1) that the representatives are to vote on an individual and personal basis. They are not bound by any instructions and may not receive a binding mandate.

Art. 25(a) of the Statute of the Council of Europe is less clear: "The Consultative Assembly shall consist of representatives of each Member. . . ." The Assembly members' freedom of action is assured by Art. 25(b): No representative is to be deprived of his or her other position as such during a session of the Assembly without its agreement. Although Art. IX of the Brussels Treaty speaks of the members of the WEU Assembly as representatives of the Brussels Treaty Powers, the same rule applies in favour of its members.

The Helsinki Treaty, the Benelux Treaty, and the treaty establishing the CIC do not include any express prescriptions concerning the character of the mandate of the members of their parliamentary organs. These organs have corresponding executive organs with representatives of the governments. Furthermore, their member States have a long parliamentary tradition. Finally, the freedom from mandate indirectly results from the treaties through, for example, the respective rules of procedure (see sections 4(e) and 5, *infra*).

(*b*) *Incompatibilities*

Only a few provisions contain express regulations about incompatibilities. According to the second sentence of Art. 25(a) and Art. 36(d) of the Statute of the Council of Europe, the members of the Consultative Assembly must not at the same time be members of the Committee of Ministers or of the Secretariat (→ International Secretariat). The EC Treaties do not include any such regulations. Art. 6(1) of the Election Act now prescribes that members of the EP may not be members of the government of a member State or of the Commission, or judges at the → Court of Justice of the European Communities. In addition, each member State may lay down rules at the national level relating to incompatibility (Art. 6(2)). On the other hand, the members of the EP may be members of their national parliaments (Election Act, Art. 5). Apart from this example, members of the other parliamentary assemblies may also be members of

the national governments if admissible according to national law.

(*c*) *Term of the mandate*

In most cases, the determination of the term of the mandate is left to the member States. Art. 3(1) of the Election Act prescribes a period of five years for EP membership and to that extent replaces the former national provisions. In the other case of direct elections, the period for the members of the Andean Parliament will be two years (Andean Parliament Treaty, Art. 6). According to Art. 25(a), para. 2 and Art. 32 of the Statute of the Council of Europe (and therefore applicable to the WEU Assembly as well), the term of mandate for the Consultative Assembly must be at least one year.

(*d*) *Privileges and immunities*

The members' privileges and immunities are granted to assure and facilitate the performance of their tasks (see, e.g., Art. 40(a) of the Statute of the Council of Europe) and of the parliamentary organ itself (see Art. 28 of the EC Merger Treaty of April 22, 1970). For the Assemblies of the EC, the Council of Europe, the WEU and Benelux, such provisions are contained in similar special protocols. According to these provisions, no administrative or other restriction is to be imposed on the free movement of the members travelling to or from the place of meeting. They are not to be subjected to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties. During the sessions and travelling to and from the meeting place members enjoy, in the territory of their own State, the immunities accorded to members of their parliament, and in the territory of any other member State, immunity from any measure of detention and from legal proceedings. Immunity cannot be claimed when a member is found in the act of committing an offence; moreover, an assembly may waive the immunity (→ International Organizations, Privileges and Immunities; → Waiver).

Art. 11 of the Andean Parliament Treaty refers on this matter to the provisions of the 1961 → Vienna Convention on Diplomatic Relations (but excluding Art. 31). For the Nordic Council, the idea of diplomatic immunity has been rejected. Consequently, the Helsinki Treaty and other regulations do not include any corresponding provisions.

(*e*) *Expenses and allowances*

Art. 38(a) of the Statute of the Council of Europe and Art. 58, para. 1 of the Helsinki Treaty expressly lay down the principle that each member State bears the expenses of its own representation in the international organization and therefore also in the parliamentary organ. Even following the adoption of direct suffrage, the EC provisions do not include any rules concerning expenses and allowances. The EP does, however, offer certain sums to its members to pay the costs of travel and accommodation and of keeping an office. This difference from other assemblies is the result of a greater work-load for EP members. Nevertheless, a unified regulation for the session's expenses and allowances would prevent disparate treatment by the various member States. The recent proposals of the EP for a further unification of the election procedure do not resolve this problem (EP Doc. 1-988/81 A, B and C of February 10, 1982).

4. Powers

(*a*) *Legislation*

Few international organizations are empowered to legislate in the sense of issuing binding provisions (→ International Legislation). Therefore, one of the most important traditional functions of a national parliament cannot be fulfilled. In this regard, the EC constitutes an exception and, correspondingly, the EP is the only assembly considered here. In fact, the EP has a right of approval only in one marginal case (see Art. 95, para. 4 of the ECSC Treaty). On the other hand, many provisions of the EC Treaties prescribe the consultation of the EP in the legislation procedure. The position of the EP has been underscored by the Court of Justice of the European Communities in its Isoglucose Judgments: Due → consultation of Parliament in these cases constitutes an essential formality. Failure to consult the Parliament means that the measure concerned is void (Cases 138 and 139/79, ECR 1980, p. 3333 and p. 3393).

(*b*) *Advisory functions*

According to Art. 22 of the Statute, the Consultative Assembly is the deliberative organ of the Council of Europe. It may debate matters and present recommendations within its competence under the Statute to the Committee of Ministers. It also may discuss and make recommendations on any other matter referred to it for its opinion by the Committee of Ministers (Art. 23(a)). The recommendations are not binding (cf. → International Organizations, Resolutions). The most important activity of the Consultative Assembly in this field has been the recommendation of the conclusion of many important international conventions and agreements, notably the → European Convention on Human Rights (1950).

The Assembly of the WEU may make recommendations or transmit opinions to the Council on any matter consonant with the aims and falling within the terms of reference of the WEU (Art. V(a) of the Charter of the Assembly). By this provision, the Assembly has extensively interpreted the powers given to it in Art. IX of the Brussels Treaty.

The function of the Nordic Council is also mainly deliberative. It has an express right of initiative (Helsinki Treaty, Art. 44, para. 1). It may present recommendations and opinions to the Council of Ministers or to one or more governments (Art. 45), and may also discuss any other important problem of Nordic cooperation (Art. 46).

In the fields specified in Art. 3, para. 1 of the Treaty establishing the CIC, this organ has the right to make recommendations to the Benelux governments. Only with their consent may it discuss other problems of common interest (Art. 3, para. 2).

The Andean Parliament may issue its decisions in the form of recommendations. It may propose measures and propositions which tend to establish closer relations among the legislative bodies of the member States (Andean Parliament Treaty, Arts. 13(c) and 14).

The EP has a right to be consulted in many stages in the legislation procedure (for the consequences of non-consultation see section 4(a) *supra*). The opinions of the EP are not binding. Since 1975, a procedure of concertation has been introduced, in cases where the Council does not wish to follow the EP's opinion. Apart from this, the EP is consulted in almost every procedure concerning important legislative acts and programmes. Although not laid down in the Treaties, the EP claims the right to address "initiative reports" to the Council, Commission and member States.

(*c*) *Control*

All parliamentary assemblies receive an annual report from the executive organ of the organizations. In discussing this report, the assemblies may exercise a certain control, but can react only with non-binding measures. The Council of Europe's Consultative Assembly is also furnished with annual reports from other organizations (e.g. the → European Free Trade Association and the → Organisation for Economic Co-operation and Development) and thus has extended its control.

Only the EP has any real direct means of control over the executive: it may force the Commission of the EC to resign by a motion of censure carried by a two-thirds majority of the votes cast and representing a majority of the total members of the EP (EEC Treaty, Art. 144). As the EP has no comparable influence on either the Council or on the composition of the new Commission, the effect of this means is limited.

The members of all parliamentary assemblies have the right to put written or oral questions to the executive organ. Detailed regulations for this are usually found in the rules of procedure (e.g. Rules of the EP, Nos. 44 to 46). This right has often developed separately from any rules contained in the constituent treaties (e.g. EEC Treaty, Art. 140, paras. 1 and 2).

(*d*) *Budget*

The powers of the assemblies over the budget vary. The Andean Parliament Treaty does not include any provision relating to this, while, under Art. 58, para. 2 of the Helsinki Treaty and Section 31 of its working procedure, the Nordic Council drafts its budget for joint expenditures and participates in the budget procedure of the Nordic Council of Ministers through a budget commission.

Although Art. 38(d) of the Statute of the Council of Europe allows budget requests only to the Committee of Ministers, since 1973 the Con-

sultative Assembly has had the right to propose a budget relating to its own operations. The Assembly of the WEU may, in addition, express its view on the annual budget of the WEU (Charter of the Assembly, Art. VIII). According to Art. 35(1) of the Rules of Procedure, the CIC of Benelux has the right to draft its own budget.

The budgetary powers of the EP have been repeatedly increased. After two main amendments of the budget procedure, the EP now has the right to amend the budget. This right varies depending upon the different kinds of expenditures. Furthermore, the EP has, by a majority of its members and two-thirds of the votes cast, the right to reject the Commission's draft budget and to ask that a new one be drawn up (EEC Treaty, Art. 203). It used this power in 1980 for the first time.

(*e*) *Rules of procedure*

All parliamentary assemblies have the right to establish their rules of procedure. To varying extents, the constituent treaties themselves prescribe the contents of and the procedure for establishment of such rules. The WEU Assembly, for example, proposed a Charter more precisely fixing its powers, which are left uncircumscribed in Art. IX of the Brussels Treaty. While most of the provisions prescribe a majority of the members, Art. 59 of the Helsinki Treaty lays down a two-thirds majority, and Art. 30 of the Statute of the Council of Europe leaves it to the Consultative Assembly to determine the majority required for the adoption of rules of procedure.

(*f*) *Voting majorities*

Parliamentary assemblies usually act by non-binding resolutions and recommendations. Nevertheless, many treaties foresee special voting majorities for decision-making. Art. 29 of the Statute of the Council of Europe, Art. 15 of the Andean Parliament Treaty and Art. 5 of the Treaty establishing the CIC require a two-thirds majority. The EP acts by an absolute majority of the votes cast (EEC Treaty, Art. 141), save as otherwise provided (e.g. in Art. 293 discussed in section 4(d) *supra*).

5. Functioning

(*a*) *Sessions*

In accordance with the treaties, all parliamentary organs meet at least once a year. Besides this, most of them may meet in extraordinary sessions at the request of the assembly itself, the president, the governments of the member States (Nordic Council and CIC) or other organs of the organization (e.g. the Commission or the Council of the EC, EEC Treaty, Art. 139, para. 2). In practice, the frequency of sessions varies between two annually (WEU Assembly) and one monthly (EP). All assemblies have to face the problem that most of their members have to make long journeys to get to the meeting place.

Except for the Andean Parliament, all assemblies must debate in public unless they decide to do otherwise (Statute of the Council of Europe, Art. 35; Helsinki Treaty, Art. 51, para. 4; Charter of the WEU Assembly, Art. IX; Rules of Procedure of the CIC, Art. 13; EP, Rule 63).

(*b*) *Committees*

The number of committees of the parliamentary assemblies varies from between four (WEU) and sixteen (EP). In part, they are prescribed by the constituent treaties, and in part only by the rules of procedure. Some assemblies may create committees for special subjects (Working Procedure of the Nordic Council, Art. 49; Rules of Procedure of the CIC, Art. 28). According to Art. 53, para. 2 of the Helsinki Treaty, the committees of the Nordic Council are organs which prepare the work of the Nordic Council. The Assembly of the WEU has the right to appoint committees of investigation, requiring the approval of the Council (Charter, Art. VIII(f)). The EP can set up various kinds of committees, including committees of inquiry, and may itself define their powers (Rules 91 and 95).

(*c*) *Secretariat*

To provide assistance in their work, all parliamentary assemblies rely on the services of secretariats. The assemblies of the WEU, the CIC and the EP have their own secretariats. The Council of Europe has a secretariat for the organization as such which is obliged to provide such administrative and other assistance as the

Consultative Assembly may require (Statute, Art. 37). The secretariats of the Andean Parliament and of the Nordic Council are attached to the respective President's office. Each delegation has to engage the personnel for its own assistance (Helsinki Treaty, Art. 54, para. 2). While the Andean Parliament is to have a secretariat *pro tempore*, the EP's secretariat permanently employs about 2500 civil servants (→ Civil Service, European).

(*d*) *Political groups*

Although without legal basis in the treaties establishing the organizations, political groups have been formed in all assemblies except the Nordic Council. These groups are acknowledged by the rules of procedure (for the Council of Europe's Consultative Assembly only since 1964). As in national parliaments, such acknowledgement has consequences for the allocation of speaking time and other facilities. The rules of procedure fix minimum numbers for the setting up of such groups. According to Rule 26(5) the minimum number for the EP is 21 if all members come from a single member State, 15 if they come from two, and 10 if they come from three or more member States.

6. *Evaluation*

(*a*) *Powers*

The growing importance and competences of international organizations have given rise to national parliamentarians' desire to participate in this field of policy. National parliaments may ultimately exercise their powers by rejecting international treaties or passing motions of censure against their national governments or ministers responsible for foreign policy. In a context of growing → interdependence between States, participation on the international level would seem to be more rational.

The importance of the parliamentary assemblies depends very largely on the competences of the organization. Accordingly, the WEU Assembly has remained weak in view of the importance of NATO and the broader competences of the Council of Europe, while the EP, on the other hand, has been strengthened by the growing importance of the Common Market, and also by its new competences and direct elections.

The assemblies themselves have little influence on their competences. Nevertheless, some latitude in this respect does exist for example in their rights to establish rules of procedure. Politically, their influence depends on legitimation by acknowledgement in public opinion or by direct suffrage. But basing political weight upon the public's support is a double-edged sword; for instance the lack of visible political credibility after low participation in elections may well reduce their authority. As a consequence of the broad and overlapping competences given to the WEU, the Council of Europe and the EC, there are tendencies towards a clarification and unification of these competences (see Recommendation No. 372 of the WEU Assembly).

Although parliamentary assemblies are preponderantly deliberative, to some extent controlling, and, rarely, determinative bodies, the trend is towards increasing their powers. An accompanying feature to this process is that they are adapting themselves more and more to the functioning methods of national parliaments.

(*b*) *Integration*

Parliamentary assemblies are mainly a factor for integration between the national and the international or supranational levels (→ Supranational Organizations). Members' concurrent membership in national parliaments assures a close connection to those national parliaments, exchange of information and better understanding of international affairs. The creation of political groups, especially on the EC level, supports the formation of parties or party alliances across frontiers. Public debates may, in the end, have the effect of promoting integration of the peoples of the member States on matters of mutual concern to their citizens. A particular opportunity is offered in this respect when the participation of the citizens is secured through direct elections to the parliamentary organ, as yet realized only in the EP.

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PATENT LAW, INTERNATIONAL *see* Industrial Property, International Protection

PAYMENTS, INTERNATIONAL REGULATION *see* International Monetary Fund; Monetary Law, International

PEACEKEEPING OPERATIONS OF UN *see* United Nations Peacekeeping System; United Nations Forces; Uniting for Peace Resolution

PLURINATIONAL ADMINISTRATIVE INSTITUTIONS

1. Notion

Plurinational administrative institutions are today emerging as effective instruments for international cooperation in the legal, economic, and technical fields. They may be regarded as a pragmatic response to the need for a flexibly-structured régime capable of performing transnational activities of an administrative nature where politically-oriented international organizations, → international administrative unions, or national entities are deemed unsuitable. The reasons for the choice of plurinational administrative institutions as the institutionalized form of cooperation are thus generally political, economic and practical.

Although it might be possible to transfer the realization of a transfrontier project to independent private enterprises by an agreement between the States involved, such a solution would often meet with political objections. Generally, governments consider projects involving their territory, → natural resources, utilities and transportation too important to relinquish them to private enterprises without keeping at least some degree of control. As national action, as well as the more traditional international arrangements, are not suitable due to the functions to be performed, plurinational administrative institutions reflect a sort of compromise allowing for governmental control or participation but at the same time maintaining enough independence for the institution to retain the efficiency of private enterprise. Besides this, setting up joint management (→ Joint Undertakings) may also circumvent delicate political questions while at the same time shielding the institution from the effects of political changes.

Plurinational administrative institutions may emerge in all fields where transfrontier arrangements are needed. They are rather frequent in, but not limited to, cases of transfrontier cooperation between municipalities. With respect to the details of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities see → Transfrontier Cooperation between Local or Regional Authorities.

Though various entities may clearly be identified as plurinational administrative institutions, their essential contours are amorphous. The notion of plurinational administrative institutions should be regarded as a working concept encompassing various highly diverse

structural types. The spectrum ranges from institutions which are or which resemble joint stock corporations to others that are similar to national administrative agencies or again others that are structured like international administrative unions. Their common denominator lies in a basic agreement or other international understanding between the States concerned, or their municipalities, or national administrative entities, which constitutes the fundamental legal régime of the respective institution.

The distinction from international administrative unions and international organizations is based on structural as well as on functional aspects (→ International Organizations, General Aspects). Often plurinational administrative institutions consist of a management structure generally uncommon in other forms of international cooperation. However, this is not absolutely decisive; for example, the → International Bank for Reconstruction and Development has a commercial enterprise management structure though it does not fall under the category of plurinational administrative unions. They further have a limited membership and their functions are restricted as to serve only the interests of those members. The latter aspect is important in the proper classification of river commissions (→ International Rivers).

Further, plurinational administrative institutions must be distinguished from private corporations, where a State is only one of the shareholders (e.g. the Compagnie Universelle du Canal Maritime de Suez, founded in 1858; → Suez Canal). However, it is difficult to make a hard-and-fast distinction here as there are entities which have all the characteristics of private corporations, but because of their functions have to be regarded as plurinational administrative institutions.

Inclusion in the category of plurinational administrative institutions requires that the given entity exercise at least some administrative functions. Thus, organs with only recommendatory powers, such as the commission created by France, the Federal Republic of Germany and Switzerland in 1975 to facilitate the examination and solution of problems arising at their common border, should be excluded.

2. *Types*

(*a*) *Institutions organized as private corporations*

This type of plurinational administrative institution is exemplified by the → European Company for the Financing of Railway Rolling Stock (Eurofima), a Swiss joint-stock corporation and the International Company of the → Moselle, a German limited company. Both companies came into existence under the company law of the countries concerned although they were founded first by international agreement. They are governed primarily by their respective constituent agreements, and only subsidiarily by Swiss or German law. To this category also belongs the corporation founded under the Convention on the Construction and Operation of a Very High Flux Reactor (1967) and the Swiss company founded for the administration of the St. Bernhard Tunnel.

A variant on this pattern is the → Bank for International Settlements, a Swiss company, which, however, was granted legal personality in the territories of all the founding member States.

In spite of their structural form inclusion of these corporations among the plurinational administrative institutions is justified, as they are all governed by an international agreement and enjoy certain privileges and immunities; these factors bear witness to their international character.

(*b*) *Institutions organized as international corporations*

The only case falling within this category of plurinational administrative institution is the Scandinavian Airlines System (SAS), which is owned by the three national air carriers of Denmark, Norway and Sweden. Thus, it is legally owned by corporate bodies and not by the constituent States themselves. However, as these national carriers are controlled by their governments, SAS has to be regarded as a public entity. SAS has a commercial-company type of management, a Board of Directors, a General Manager, and an Assembly of Representatives. It has no legal personality under national law, but may participate in legal actions. The national carriers exercise the privileges accorded them by

the States as concessionaires (→ Concessions) through the joint facilities of SAS.

The organization of SAS did not originate from definite political or economic considerations; it developed gradually, taking account of the need for securing governmental control of air traffic (→ Air Law) on the one hand and the necessity for the establishment of a commercially competitive air transport system on the other.

(*c*) *Institutions organized like national agencies*

Only the Basle-Mulhouse Airport (→ Airports) belongs to this type of plurinational administrative institution. This airport is somewhat unique, as it primarily benefits Switzerland, although it is located in France. Its legal framework was laid down in a 1949 convention concluded between France and Switzerland. It contains the statutes of the airport, a description of the facilities to be built and a catalogue of mutual obligations. Though structured like an international corporation, the airport régime bears a close resemblance to French agencies engaged in similar activities. The government and policy-making body of the airport is its Administrative Board, appointed by France and Switzerland. The powers of the Board are limited as the major decisions require approval by the national authorities. The executive head is the Manager, appointed by the Board, and the Commandant, who acts as an agent of the French Government. The technical staff of the airport belong to the French civil service, while the administrative staff have a non-national status. Basically, the airport is dominated by France, this being achieved by structuring it along the lines of the French legal system and by subjecting its administration in part to the French civil service.

(*d*) *Institutions organized like international administrative unions*

A fairly large number of plurinational administrative institutions are structurally very similar to international administrative unions at an early stage of their development. They are provided with a two-organ structure, a plenary organ in which all members are represented, and a secretariat (→ International Secretariat), instead of the three-organ structure common to international organizations. Several examples of this type follow. The → European Organization for Nuclear Research, which provides the framework for collaboration among European States in → nuclear research, was founded in 1953. Its organs are a Council representing all members and a Director. The European Organization for Experimental Photogrammetric Research was founded in 1954 and aims to improve the accuracy, quality and efficiency of aerial surveys. All members, States parties or governmental or semi-governmental agencies are represented in its Steering Committee; its executive organ is the Bureau. The European Space Vehicle Launcher Development Organisation (ELDO), founded in 1962, had as its aim the development and construction of space vehicle launchers; the organs were the Council and the Secretary-General. ELDO has since been merged into the → European Space Agency. The European Molecular Biology Laboratory (→ European Molecular Biology Cooperation), created in 1973, promotes cooperation among European States in fundamental research, as well as in the development of advanced instrumentation and in advanced-level teaching of molecular biology. The → European Patent Organisation, established in 1973 grants patents for inventions (→ Industrial Property, International Protection). Its organs are the President and an Administrative Council. The European Centre for Medium Range Weather Forecasts, founded in 1973, is devoted to the development of models of the atmosphere with a view to preparing medium range weather forecasts by means of numerical methods. Its organs are a Council and a Director. Finally, the → European Organization for the Safety of Air Navigation (Eurocontrol) strengthens air navigation cooperation in Europe.

All the institutions mentioned share the common feature of enjoying within the host State privileges and immunities protecting premises and personnel similar to the protection enjoyed by international organizations and international administrative unions (cf. → International Organizations, Headquarters). They are to be distinguished from international administrative unions only by their limited membership, and

from international organizations by their limited functions.

(e) Institutions created within an international organization

The foundation of such plurinational administrative institutions has been provided for in Arts. 45 to 51 of the → European Atomic Energy Community Treaty (called there "joint undertakings"). These articles only set out the legal framework without specifying the structure of these institutions. They have legal personality in all member States but do not necessarily enjoy immunities and privileges in a strict sense; the law of the host State only applies subsidiarily. Normally, their structure will be the same as that of joint-stock corporations. The Société d'énergie nucléaire franco-belge des Ardennes was the first institution created under these provisions (see further, Libbrecht). Except for their attachment to an international organization, these entities closely resemble the Bank for International Settlements in other respects.

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POLLUTION CONTROL, ACTIVITIES OF INTERNATIONAL ORGANIZATIONS *see* International Maritime Organization; United Nations Environment Programme; Environment, International Protection; Marine Environment, Protection and Preservation; Mediterranean Pollution Convention

POSTAL COMMUNICATIONS, INTERNATIONAL REGULATION

1. Historical Evolution

International postal communications developed during the Middle Ages in three successive stages. During the first stage, couriers of independent messenger systems (of courts, religious orders and universities) moved, subject to only a few official restrictions, to and from destinations in foreign territories. During the second stage, official royal posts were created (in France, 1477; in England, 1481) which gradually established stations with their own representatives in foreign countries for the purpose of sending and receiving mail. During the third stage (from the 17th century onwards), frontiers were closed to the representatives of foreign postal services, which necessitated the conclusion of postal → treaties for the forwarding of mail across frontiers from one postal system to another. One of the first treaties of this kind was concluded in 1601 between France and Spain. Another postal treaty, of 1670 between France and England, regulated the Paris-London route and contained fairly detailed provisions on frequency (twice-weekly services) and on rates to be charged.

The scope and content of these bilateral postal treaties differed widely. They were concluded without any real coordination, and the use of postal services became more and more complicated during the 19th century when the number of agreements on international services increased greatly. In addition, postal charges were generally high, since governments viewed them as a means to secure additional governmental revenue. During the 1840s a number of countries therefore carried out postal reforms in order to expand the postal services and their volume (England in 1840; Prussia in 1844 and 1850; the United States in 1845; France in 1848). On the international level, attempts to achieve reform resulted in the establishment of the Austro–German Postal Union in 1850, the convening of the first international postal conference at Paris in 1863, and finally, as a

result of the international Postal Congress of Berne in 1874, in the establishment of the General Postal Union (Treaty, CTS, Vol. 147, p. 136), renamed the → Universal Postal Union (UPU) in 1878.

The treaty establishing the UPU, later called the Universal Postal Convention, replaced the former bilateral system and, through numerous revisions and accessions, developed into a uniform postal law applicable world-wide. In addition, a great number of States have since 1931 grouped together in regional postal unions, the "restricted unions" recognized by the UPU, which offer their users more favourable terms than the general UPU standard. At a third level, a number of UPU member States continue to regulate certain postal matters which are not, or at least not exhaustively, covered by the UPU Acts through bilateral treaties.

2. Current Legal Situation

The UPU Acts, which are regularly revised by the UPU's Congress, consist of the following instruments: the UPU Constitution, plus the General Regulations governing its implementation; the Universal Postal Convention, plus the Detailed Regulations governing its implementation; and the seven Optional Agreements on specific postal matters, plus the corresponding seven Detailed Regulations. The latest revisions were approved by the Congress of Rio de Janeiro in 1979.

The Universal Postal Convention contains the principal rules governing international postal services, in particular the more specific rules applicable to letter mail. The seven Optional Agreements contain specific rules on seven types of special services: postal parcels, postal money orders and traveller's cheques, giro transfers, cash-on-delivery items, collection of bills, international savings bank service, and subscription to newspapers and periodicals. All UPU members are parties to the UPU Constitution, the UPU Convention and the respective regulations (Constitution, Art. 22(4)), whereas accession to the specific Agreements is optional.

The basic principles underlying the regulation of postal services by UPU are the following:

(a) formation of a single postal territory among the member States for the reciprocal exchange of letter post items (Constitution, Art. 1(1));

(b) guarantee of freedom of transit (Constitution, Art. 1(1); Convention, Arts. 1 to 3);

(c) standardization of postal charges to be collected by each country (Convention, Art. 7(1) and (2));

(d) non-apportionment of postage paid for letter post items between the sender country and the country of destination (Convention, Art. 60);

(e) settlement of disputes between members by means of → arbitration (Constitution, Art. 32).

The principle contained in Art. 1(1) of the UPU Constitution – that member States form a single postal territory for the reciprocal exchange of letter post items – has, according to the UPU's own annotations, merely "symbolic value". In particular, it does not imply a world territorial jurisdiction in postal matters for the UPU. The notion of the "single postal territory" refers rather to the creation and administration by the UPU of world-wide uniform principles and to the absence of barriers to postal communications at national borders. Uniformity is achieved through the application of the Acts by all members. Under Art. 24 of the UPU Constitution, members may not enact contrary national legislation. The "primacy" of the UPU Acts over contrary national law is generally recognized (→ International Law and Municipal Law). Uniformity is also promoted by the principle of standardization of postal charges (which, in practice, has proved impossible to apply strictly). The absence of national barriers to postal communications is ensured by the principle of non-discrimination (→ States, Equal Treatment) of foreign mails and by the guarantee of freedom of transit.

The principle of non-discrimination has generally been applied in the sense of according national treatment to the handling and forwarding of all foreign mail. One of its important elements is the duty of members' administrations always to forward international mail by the most rapid route, i.e. at least by the route on which domestic mail is transported (Convention, Art. 1(1)).

The guarantee of freedom of transit of foreign mail implies the legal duty of member administrations to concede passage of foreign mail through its own territory (Constitution, Art. 1(1); → Passage, Right of). The transit State may not subject the transit to the charge of payments of a

fiscal nature (→ Traffic and Transport, International Regulation). It may merely levy charges corresponding to the costs actually incurred by the handling and forwarding, but not exceeding the level charged for this on domestic mail (Convention, Art. 61). Customs and sanitary procedures, if any (e.g. in the case of postal parcels), are those specified in the UPU Acts (→ Customs Law, International). If the freedom of transit rule is not observed by a member State, the other members have the right to suppress all postal services to and from that State (Convention, Art. 2).

As between the country of origin and the country of destination, the principle of non-apportionment of postal charges applies. The country of origin keeps all the stamp charges collected from the general public (Convention, Art. 60). This rule was based on the assumption that the volume of postal correspondence is approximately equal in opposite directions, and that it would simplify international correspondence by eliminating the difficulties of apportionment. Since those countries which received more mail than they sent out were originally not reimbursed, these States proposed the introduction of so-called "terminal charges" at several postal Congresses between 1920 and 1934. At that time, however, the financial disadvantage encountered by the "deficit" countries was considered to be offset by the non-financial advantages flowing from the higher amount of information received by those countries. It was only at the Congress of Tokyo in 1969 that the rule of non-apportionment was finally modified to the effect that receiving countries may now claim a modest compensation from sending countries for the costs of forwarding, handling and delivery of the received surplus mail (Convention, Art. 62).

The principle of secrecy and inviolability of postal correspondence developed outside the treaty law. Whereas the Convention of the → International Telecommunication Union contains a principle of secrecy of telecommunications in Art. 35 (→ Telecommunications, International Regulation), no such express provision can be found in the UPU Acts. The secrecy and inviolability principle, however, has been regarded as an essential element of the guarantee of freedom of transit. The interception of a registered letter by a transit State in 1936, on the basis of allegations that the addressee had committed a breach of a military statute of that State, was condemned by the UPU as a violation of the principle of freedom of transit. The UPU Congress at Buenos Aires (1936) declared that "subject to exceptions provided in Article 46, no item of correspondence, open or closed, can be submitted to any control or seized".

3. Special Legal Problems

The Congress of Stockholm in 1924 inserted a provision into the Convention to the effect that all persons had the right to utilize international postal services. This clause was deleted by the next Congress at London in 1929, but it remained valid as an accepted extra-treaty principle. International postal services have generally been recognized as a public service based on the cooperation of public administrations or public utilities under the UPU Acts. The rule that nobody should be denied access to such services thus remains applicable.

The admission or receipt of postal items for forwarding and delivery is subject to the rule of full pre-payment (*affranchissement*) under Art. 27(1) of the UPU Convention. Insufficiently prepaid letters and postcards may be sent back to the sender for full pre-payment. In cases where this is impossible or impracticable, the postal items are always forwarded to the country of destination, and the missing payment may be collected from the sender or the recipient.

The responsibility of the postal administration towards the user for loss or damage is governed by Arts. 50 to 59 of the UPU Convention and specific provisions in the Optional Agreements. As a general rule, the postal administration is only liable for registered items (Convention, Art. 50), insured letters (Convention, Art. 51), postal parcels (Parcel Agreement, Art. 39) and certain special services under the other Optional Agreements. The administration is not liable for the loss of or damage to other items, in particular ordinary letters. Its liability is moreover limited; in the case of registered items, a limit of 60 gold francs per item applies. In the case of insured letters, the limit is the declared value. Consequential damages or loss of gains are not taken into account. Furthermore, the administration is not responsible in the cases of *force majeure*, seizure by the country of destination, confiscation

for violation of the prohibitions listed in Art. 36 of the Convention, and in the cases specified in Arts. 52 and 53 (exceptions to the rules governing registered items and insured letters) of the Convention. When two or more administrations are involved, the administration which first accepted the item is liable (Convention, Art. 55). This administration may, however, be entitled to obtain an indemnity under Arts. 55 to 59 of the Convention.

Under Art. 4 of the Convention, member States have the right temporarily to suspend international services, wholly or partially, in extraordinary circumstances. This would seem to apply to cases of internal disorder, revolution and also to cases of outbreak of → war. Prior to World War I, freedom of transit had been respected by belligerents during several wars, and mail of neutral countries had received protection (→ Neutrality, Concept and General Rules). During World Wars I and II, the belligerents maintained international services as such, but they generally suspended freedom of transit and secrecy of correspondence, and a system of censorship was introduced. This practice leads one to the conclusion that the rules of the UPU Acts, in particular those relating to freedom of transit and secrecy of correspondence, apply fully only in time of peace.

4. Restricted Unions; Bilateral Treaties

In accordance with Art. 8 of the UPU Constitution, member States may establish restricted postal unions if their conditions are not less favourable to the general public than those of the UPU, and if at least three member States participate. To date, eight restricted unions have been set up (for details see → Universal Postal Union). The regional postal organization of the socialist States operates on a similar basis, but is not recognized by the UPU as a restricted union. Several restricted unions have introduced the rule that domestic charges apply to all or to certain postal deliveries within their members territories and that no transit charges are to be made (Postal Union of the Americas and Spain; Arab Postal Union). Other restricted unions have introduced reduced rates within their territory (→ European Conference of Postal and Telecommunications Administrations). Although this weakens the UPU's objective of standardization of charges and uniformity, it has been accepted as favourable to the interests of the user. The restricted unions also coordinate the policies of their members with regard to decisions to be taken within the UPU.

In addition to their participation in the UPU, and in many cases in one of the restricted unions, a considerable number of States have concluded bilateral postal agreements with other States. These agreements cover subjects which are not, or at least not exhaustively, dealt with in the UPU Acts (e.g. Agreement on Express Mail Services between the United States and the Federal Republic of Germany, of December 15, 1978/January 22, 1979, Treaties and Other International Acts Series (TIAS) 9426), or which provide solutions specifically tailored to the bilateral needs (e.g. Parcel Post Agreement between the United States and the German Democratic Republic, of May 4, 1979, TIAS 9522). A need for bilateral agreements arises also in those cases in which one of the States concerned is not a party to an Optional Agreement. Nothing in the UPU Acts prevents member States from concluding such bilateral agreements, provided that their conditions are not less favourable to the general public than those of the UPU (Constitution, Art. 8) and that the UPU's basic purpose to provide for a uniform legal framework is not undermined.

5. Significance

The UPU Acts have created a world-wide uniform system of legal rules which ensures efficiency in international postal communications and guarantees the user a certain standard of treatment. Universally applied for more than a hundred years, the principal rules of the system have been considered to have now become → customary international law (Alexandrowicz). Since administrations do not distinguish between international and domestic mail in their day-to-day operations, the system has set the terms not only for international, but also for domestic services. The restricted unions have complemented the UPU system by raising the standard of treatment for their own users as the result of special regional consensus. The bilateral agreements have fulfilled additional complementary functions.

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PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS *see* International Organizations, Privileges and Immunities; International Organizations, Headquarters

PUBLIC HEALTH, INTERNATIONAL COOPERATION

1. Historical Evolution

International cooperation in public health began to develop in the 19th century, when faster means of transport and growing international commerce led to more rapid and extensive spread of communicable diseases endemic in Africa and Asia. To organize the "defence of Europe" against cholera and other pestilential diseases, governments sought to place a barrier in their way. An international sanitary conference convened in Paris in 1851 to harmonize the conflicting maritime quarantine requirements in Mediterranean → ports drew up an international sanitary convention but hardly any country ratified it. Nine further conferences held towards the end of the century resulted in other sanitary conventions on cholera and plague, which became consolidated in 1903 in a single text.

By the Rome Agreement of December 9, 1907 (CTS, Vol. 206, p. 31), governments decided to establish the Office international d'hygiène publique (OIHP). Nearly 60 States joined the OIHP, whose main function was:

> "to collect and bring to the knowledge of the participating States the facts and documents of a general character which relate to public health, and especially as regards infectious diseases, notably cholera, plague and yellow fever, as well as the measures taken to combat these diseases."

Immediately after World War I, the League of → Red Cross Societies was established in order to "associate the Red Cross Societies of the world in a systematic effort to anticipate, diminish, and relieve the misery produced by disease and calamity". Following this initiative, Art. 23(f) of the Covenant of the → League of Nations called for joint steps "for the prevention and control of disease". On this basis, the Health Organisation of the League of Nations was created. The OIHP was initially to form its core, but the United States, after deciding not to join the League, could not accept the office's incorporation into the League. Two international health organizations thus existed side by side with a modicum of cooperation. The OIHP remained responsible for quarantinable diseases (which by then also included smallpox and typhus). It also had a part in drafting other international texts such as the Brussels agreement of 1924 on venereal diseases in seamen, the 1930 convention on anti-diphteria serum and the conventions of 1925 and 1931 on narcotics (→ Drug Control, International). During the same period, the Health Organisation of the League moved in new directions, creating, for instance, commissions on cancer and malaria. It also worked on the classification of the causes of death and diseases, and on nutrition and a unified pharmacopoeia.

At the regional level, a Far Eastern Bureau of the Health Organisation was set up in Singapore in 1925. Other regional bodies were the four Sanitary Councils in Alexandria, Constantinople, Tehran and Tangier which served as local epidemiological intelligence stations. Similarly, the Pan American Sanitary Bureau (PASB), established in 1902, collected information regarding outbreaks of epidemic diseases of international importance, but also assisted its members with a view to eliminating these diseases and encouraged port sanitation, proper sewage disposal and vector control.

2. *New Basic Concept*

International health cooperation, today centred around the → World Health Organization (WHO), is based on the modern concept of "health", defined in the preamble of the WHO Constitution as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Health work reaches into "nutrition, housing, sanitation, recreation, economic or working conditions, and other aspects of environmental hygiene" (WHO Constitution, Art. 2(i)). Health is seen not only as an objective of its own, but also as an integral part of economic and social development: People lacking adequate health cannot fully contribute to it (UN GA Res. 34/58 of November 29, 1979).

3. *Current System of Cooperation*

(*a*) *Health cooperation in the UN system*

WHO is the → United Nations Specialized Agency for health, but other → United Nations Agencies contribute to WHO's work or carry out health-related programmes of their own. As to their legal bases, relationships between WHO and these Agencies range from formal agreements approved by the governing bodies (WHO Constitution, Art. 70) or resolutions establishing joint committees to general or project-specific arrangements between the executive heads.

The major technical partners of WHO are the → International Labour Organisation (ILO) and the → Food and Agriculture Organization of the United Nations (FAO), both cooperating with WHO under formal agreements concluded in 1948. The ILO shares with WHO responsibilities for maternity protection, prevention of industrial accidents, and occupational health (the domain of a joint ILO/WHO Committee). The FAO collaborates on nutrition, insecticides and pesticides, veterinary public health and food hygiene and safety; there are joint FAO/WHO Committees and national research institutions serving as FAO/WHO collaborating centres. The FAO/WHO Codex Alimentarius Commission sets food standards protecting consumers' health and facilitating international food trade. The work of health development benefits from the UN/FAO → World Food Programme for which WHO acts as health adviser. The → United Nations Environment Programme also joins WHO in environmental health projects and programmes.

The United Nations Fund for Population Activities promotes family planning in close interaction with the WHO Programme in Human Reproduction. Major contributions to mother and child health, but also general medical supplies, come from the → United Nations Children's Fund (→ Children, International Protection); programmes are coordinated with WHO under the guidance of a Joint Committee on Health Policy. The → International Bank for Reconstruction and Development, a major source of funds for water supply and sanitation projects (for which WHO provides technical skills), also includes health components in development projects designed to increase productivity. It contributes funds, as well as economic and financial expertise, to two major programmes (onchocerciasis control in the Volta River Basin and research and training in tropical diseases). The → United Nations Development Programme participates likewise in those two programmes and finances health projects carried out by WHO as the "executing agency" (→ Economic and Technical Aid). The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) provides, as part of its relief work, direct health services to 1.6 million refugees in three countries and in the occupied Arab territories (→ Israeli-Occupied Territories); WHO provides technical supervision through medical staff assigned to UNRWA (→ United Nations Relief and Rehabilitation Activities).

(*b*) *Other inter-governmental health work*

At the global level there is little inter-governmental health work outside the UN system. In addition to the → International Committee of Military Medicine and Pharmacy, there is the International Office of Epizootics; it collaborates with WHO in the control of zoonoses which threaten both animal and human health.

Numerous regional and other limited-scope inter-governmental organizations carry out some health work, generally within broader political or economic programmes. They maintain varying forms of cooperation with WHO and its regional organizations (although geographical delineations do not coincide, particularly in Africa and Asia). The → Organization of African Unity (OAU) aims, *inter alia*, at achieving "health, sanitation

and nutritional cooperation" (Charter, Art. II(2)(d)) and has a commission whose responsibilities include these fields. Cooperation with WHO, governed by a 1969 agreement, includes an FAO/WHO/OAU Food and Nutrition Commission for Africa. Another link is WHO's collaboration with the national → liberation movements of Southern Africa which are recognized by the OAU. True health agencies are the Organisation de coordination et de coopération pour la lutte contre les grandes endémies en Afrique de l'Ouest, established in 1960 by France and States of West Africa; the similar Organisation de coordination pour la lutte contre les endémies en Afrique centrale, established in 1963; and the West African Health Community, created in 1978 by five English-speaking countries to strengthen public health services and health infrastructure. The League of Arab States (→ Arab States, League of) has a Health Committee and a Health Department in its secretariat; it cooperates with WHO under a 1961 agreement. Some health programmes are also carried out by the → Association of South-East Asian Nations (ASEAN), the Caribbean Community (→ Caribbean Cooperation), the → South Pacific Commission, and – most important in geographical coverage and activities – the British Commonwealth, which is invited to all major WHO meetings. A number of → regional development banks and similar inter-governmental funds, linked by agreements with WHO, increasingly finance projects planned or carried out by WHO.

The picture in Europe is rather complex. The → Council of Europe includes in itself a restricted group which works in the social and public health fields; this was set up in 1959 under the "Partial Agreement" between the seven Council members who also belong to the → Western European Union. Both the full and the restricted unions have separate organs and secretariats for public health. The Council concentrates on legal and → human rights aspects of health and on uniform rules (conventions or recommendations) facilitating cross-border movement of patients, health workers and of therapeutic and similar substances. Close cooperation is maintained with the WHO Regional Office for Europe, under an exchange of letters from 1952. The → European Economic Community participates in international health work both as a major funding agency for countries in Africa, the Caribbean and the Pacific and as legislator for the European member States on the free circulation of health-related goods and of professionals in the medical and allied fields. It cooperates with WHO at the regional and headquarters levels under executive agreements dating from 1972 and 1982; Community funds for health cooperation with → developing States are made available through WHO. The → Benelux Economic Union and the → Nordic Council harmonize health legislation and remove related barriers among member States. Newly active in health work is the → Council for Mutual Economic Assistance. Since 1975 it has had a Standing Commission on Cooperation in Public Health, coordination efforts in environmental and occupational health, medical science and health care, as well as standardizing quality requirements and assessment of medicines and similar products. Comecon supports health programmes in socialist developing countries. Under a 1978 exchange of letters contacts are maintained by Comecon with WHO.

(c) *Non-governmental health cooperation*

Voluntary agencies, foundations, religious bodies, international associations of health professionals and international groups devoted to combatting specific diseases play an important role in health cooperation. The International Committee of the Red Cross and the League of Red Cross Societies, pioneers in this field, bring health relief in times of war and natural disasters (→ Relief Actions). They are among the 125 → non-governmental organizations (NGOs) maintaining official relations with WHO, which participate in WHO meetings and programmes. Also in this group is the Council for International Organizations of Medical Sciences created in 1949 on a joint initiative of WHO and the → United Nations Educational, Scientific and Cultural Organization; this Council, together with the World Medical Association, plays a leading role in health ethics. NGOs, even outside the health sector, contribute to health cooperation with developing countries in an amount estimated to be higher than WHO's own technical cooperation funds.

4. Coordination Role of WHO

In financial terms, WHO's contribution to health in the developing countries is relatively modest (ten per cent of all external funds, estimated at US $3 thousand million for 1978, to which the developing countries added $14 thousand million of their own). Bilateral health cooperation from the Western countries alone amounts to four times WHO's resources. WHO's global objective is "Health for All by the Year 2000". To this end, WHO, acting as "the directing and coordinating authority on international health work" (WHO Constitution, Art. 2(a)), has since 1980 gathered together in a consultative Health Resources Group, governments, inter-governmental organizations, foundations and NGOs providing resources for health cooperation, and developing countries, in order to mobilize all available funds for health development and to rationalize their use.

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RAILWAY TRANSPORT, INTERNATIONAL REGULATION

1. Concept; History

There is no general rule of public international law obliging States to limit their → territorial sovereignty by guaranteeing freedom of transit or constructing or operating railway lines (see → Railway Traffic between Lithuania and Poland (Advisory Opinion)), but a great deal of international railway transport is regulated by the multitude of international → treaties in force.

The opening of the first railway line in England in 1825 had a revolutionary impact on inland transport. The development of rail traffic was not achieved without a high degree of international cooperation between the railway enterprises and the governments concerned. In order to achieve and guarantee a large-scale transnational railway network in Europe, around 80 bilateral and trilateral international treaties concerning construction, junction and operation of railway lines were concluded between 1846 and the outbreak of World War I, e.g. among them the 1873 St. Gotthard Convention.

As in other fields of transport and communication, multilateral cooperation was soon found to be necessary (cf. → Traffic and Transport, International Regulation). The 1886 Convention on Technical Uniformity was the first important breakthrough, providing for technical uniformity of railways, particularly in respect of gauge, construction and maintenance of rolling stock, and loading of wagons. The next step of outstanding importance was the signature of the International Convention concerning the Carriage of Goods by Rail of October 14, 1890, which created a uniform law (→ Unification and Harmonization of Laws) for international railway transport. A similar Convention for the Transport of Passengers and Luggage was not signed until October 23, 1924.

Within the framework of the → League of Nations, the Convention on the International Régime of Railways, signed at Geneva on December 9, 1923, and the Statute annexed thereto attempted to establish principles and to codify international railway law in a global convention. The contracting States undertook to provide for freedom of operation and to examine together the reinforcement of existing lines and the construction of new ones, in part to avoid discrimination. Nevertheless, these provisions were merely guidelines for special conventions yet to be concluded.

2. Current Legal Situation

The 1923 Geneva Convention, although never formally abolished (→ Treaties, Termination), has lost practical significance. Transit, construction and junction of lines, operation, → railway stations on foreign territory, customs control (→ Customs Law, International), liability of

railway employees operating on foreign territory, and so forth are regulated by special agreements between the interested States. In principle, the territorial sovereignty always lies with the State on whose territory a foreign railway operates. However, before World War I, railways with a special administration and subject to the owner's territorial sovereignty did operate on foreign territories, e.g. the East Chinese Railway.

Under the auspices of the Inland Transport Committee of the United Nations Economic Commission for Europe (ECE; → United Nations, Economic Commissions), two important multilateral instruments were signed on January 10, 1952, namely the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail and the International Convention to Facilitate the Crossing of Frontiers for Goods carried by Rail.

The 1886 Convention on Technical Uniformity, in its revised version of January 1, 1939, is still in force. This Convention has been ratified by all European States except Finland, Portugal, Spain and the Soviet Union – who all have different gauges from the other countries – and the United Kingdom. The Convention does not provide for a permanent body; supervision of its implementation was conferred on the Swiss Government.

The Convention concerning the Carriage of Goods by Rail of October 1890 was revised by "ordinary revision conferences" in 1896, 1905, 1923/24, 1933, 1952, 1961, 1970 and 1980, as well as at several extraordinary conferences. As from January 1, 1975, the new International Convention concerning Carriage of Goods by Rail (CIM), signed at Berne on February 7, 1970, has been in force. The uniform transport law created by the latter Convention is based on the following principles: (a) It applies to all consignments of goods dispatched under a through-consignment note for transport over the territory of at least two of the contracting States. (b) The railways have an obligation to carry. (c) Charges must be calculated according to tariffs legally in force and duly published, with tariffs applied to all users on the same conditions. (d) The railway undertakings participating in an international transport venture form a community, responsible collectively for the execution of the contract of carriage.

Important annexes to the Convention are the voluminous International Regulations concerning the Carriage of Dangerous Goods by Rail (RID), the International Regulations concerning the Haulage of Private Owner's Wagons (RIP), the International Regulations concerning the Carriage of Containers (RICo) and the International Regulations concerning the Carriage of Express Parcels (RIEx).

For passenger transport, the International Convention concerning Carriage of Passengers and Luggage by Rail (CIV) of February 7, 1970 is now in force. This Convention follows the example set by the CIM. However, it leaves more room for regulation by international tariffs, mandatory for international passenger transport. An Additional Convention to the CIV of February 25, 1966, in force since January 1, 1973, relates to the liability of the railway for death and personal injury to passengers. In contrast to CIM and CIV, there is no collective liability. The railway subject to liability is that which operates the line on which the accident occurs.

At present, 33 States are parties to the CIM Convention. These are: all the European States, except the Soviet Union and Albania, as well as four Asian States (Iraq, Iran, the Lebanon, Syria) and three African States (Algeria, Morocco, Tunisia). With the exception of the Lebanon, the same States are signatories of the CIV and the Additional Convention. Any non-signatory State may accede to the Conventions by notifying the Swiss Government, unless at least two States have notified their objection to the accession. The importance of the Conventions requires no comment beyond the fact that in 1980 CIM applied to 270 000 and CIV to 230 000 kilometres of railway lines.

From the Eighth Revision Conference of CIM/CIV the Convention on International Carriage by Rail (COTIF) of May 9, 1980 emerged with a new structure. The body of the text of the COTIF contains the constitutional provisions while the uniform transport law is found in two appendices, the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (Appendix A) and the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (Appendix B). Numerous provisions of these Uniform Rules may be amended by decision of a Revision Committee. These amendments enter into force for all the member States unless a third of the member States have lodged an objection. The Convention

has been signed by all the member States of CIM and, based on past experience, one can expect that it will enter into force in 1985 (→ Treaties, Conclusion and Entry into Force).

Railway transport between the East-bloc countries is governed by the Agreement concerning International Transport of Goods by Rail (SMGS) and the Agreement concerning International Passenger Traffic (SMPS) of December 6, 1950. These agreements were concluded between Bulgaria, Poland, Romania, the German Democratic Republic, the Soviet Union, Czechoslovakia and Hungary, and entered into force on November 1, 1951. In the meantime, Mongolia, Vietnam, North Korea and the People's Republic of China have acceded to the agreements. The SMGS/SMPS were concluded between the transport ministries of the above-mentioned countries on behalf of the railway administrations and were not subject to ratification. Nevertheless, the parties consider them as treaties under public international law. The SMGS/SMPS arrangements follow the example set by those of the CIM/CIV. Mainly for political reasons, a good deal of emphasis was laid on the fact that the obligation to carry depends upon existing transport plans. International traffic between countries which are parties to both the CIM/CIV Conventions and the SMGS/SMPS Agreements is carried out exclusively in accordance with the provisions of the SMGS/SMPS Agreements.

For historical and geographical reasons, governmental international cooperation in the field of railways outside Europe has never had the same significance. Legal systems regulating carriage by rail in the United States and Canada, for example, are so similar that through carriage of goods on the basis of one transport document takes place without difficulty, even in the absence of international regulations. Between other countries, where international railway transport exists, it is usually carried out by re-consignment at the frontier.

Common Art. 2 of the CIM and CIV contain provisions concerning carriage by more than one mode of transport. Regular road or shipping services, which are complementary to rail services and on which international traffic is carried, may be included, in addition to services on railway lines, in the list of lines to which the CIM/CIV Conventions apply. Due to their different legal characters, no conflict is possible between the CIV/CIM régime and the UN Convention on International Multimodal Transport of Goods adopted on May 24, 1980 in Geneva. Art. 30 of the UN Convention also contains a declaratory provision to this effect.

3. International Organizations

(a) Governmental organizations

The 1890 Berne Convention concerning the carriage of goods by rail set up the Central Office for International Railway Transport (OCTI) as a permanent secretariat placed under the auspices of the Swiss Government. At present, the administrative and financial control of its affairs is entrusted to an Administrative Committee composed of eleven members chosen from the contracting States. The COTIF of May 9, 1980 creates an international organization whose main organs are: the General Assembly, the Administrative Committee, the Revision Committee, the Expert Committee for the transport of dangerous goods and the Central Office (OCTI) as a permanent secretariat.

In 1957, the member States of the SMGS and SMPS created the International Organization for the Collaboration of Railways (OSShD) in order to develop international traffic and facilitate scientific and technical cooperation. Albania and Cuba adhered to this organization.

Within the framework of the ECE, the Inland Transport Committee is, among other things, concerned with problems of international railway traffic. Committees dealing with such questions also exist within the framework of the United Nations Economic Commissions for Africa, Latin America, Asia and the Far East. The → European Conference of Ministers of Transport pays special attention to questions concerning railways. It initiated, for example, the creation of the → European Company for the Financing of Railway Rolling Stock (Eurofima). The → European Economic Community too is concerned with problems of international railway transport, especially in the context of Arts. 74 to 84 of its constituent treaty, and of Art. 70 of the Treaty creating the → European Coal and Steel Community.

(b) Non-governmental organizations

Thirty-five West and East European railway

undertakings as well as 40 non-European railways in all continents are members of the International Union of Railways (UIC) with its headquarters in Paris. The UIC coordinates, *inter alia*, the activities of the European Passenger Timetable Conference (CEH), of the European Goods Trains Timetable Conference (CEM), and of the International (Railway) Wagon Union, which ensures the application of the International Agreement relating to Mutual Utilization of Freight Cars in International Traffic (RIV) of Passenger and Luggage Cars (RIC). The UIC also controls the activities of the Central Bureau of Compensation (BCC) in Brussels, founded in 1923 to facilitate settlement of inter-railway accounts. The International Rail Transport Committee (CIT) was established to frame regulations supplementary to those contained in the CIM and CIV Conventions.

The International Railway Congress Association (IRCA), founded in 1885 and established in Brussels, promotes railway cooperation particularly through sharing of scientific information. Membership is open to governments, transport administrations, railways and railway organizations.

The Pan-American Railway Congress Association is composed of governments and railway companies of 20 countries. The African Union of Railways (AUR) was founded in 1972 under the auspices of the UN Economic Commission for Africa in Addis Abeba. The constituent treaty was submitted to the governments for acceptance, since all 22 participating railway companies are State-owned; nevertheless, the AUR is a → non-governmental organization.

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RED CROSS

1. Notion

The appellation Red Cross is used to designate a group of humanitarian institutions, all inspired by the same ideals, considering themselves as part of the same movement. The expression often serves to designate all these institutions together, or one or the other of them. By Red Cross Conventions are meant the international conventions for the protection of war victims which were signed on various dates at Geneva as a result of the persistent efforts of the Red Cross (→ Geneva Red Cross Conventions and Protocols). The name "Red Cross" derives from the protective emblem – a red cross on white ground – which was adopted in the original Convention of 1864 (→ Emblems, Internationally Protected). The adoption of the Red Crescent emblem by certain States in later years does not affect the universality and cohesion of the Red Cross movement.

2. Basic Red Cross Principles

The basic idea of the movement is purely humanitarian: to alleviate and, if possible, to prevent suffering inflicted on human beings, without any distinction whatsoever, and with respect for human dignity. This idea is expressed in the two leading Red Cross general principles: humanity and impartiality. The other principles, recognized as of paramount importance for Red Cross existence and action are the following: neutrality (refusal to take sides in hostilities or to engage in controversy), independence (autonomy *vis-à-vis* governments), voluntary service (the Red Cross is a non-profit organization and the majority of Red Cross workers are unpaid), unity (a single Red Cross Society in any country), universality (the movement is world-wide and each national Society participates in it on an equal

footing; see Res. VIII, XXth International Conference of the Red Cross, Vienna, 1965).

3. *Historical Development*

The conception that belligerents have a duty to care for and protect wounded → combatants, friend or foe, was not recognized for a long time in general international law, although it was not unknown as a moral principle in previous times (→ Wounded, Sick and Shipwrecked). Moreover, from the beginning of the 19th century, with the advent of large scale armed forces, a deterioration of the military medical services took place. Various people became aware of the need to improve the situation and developed successful activities in this field (e.g. Dr. Palasciano in Italy, Dr. Pirogov and Florence Nightingale during the → Crimean War). It was, however, as a result of the book of Henry Dunant, Un souvenir de Solférino (1862), which had a tremendous impact, that a decisive step forward was taken (→ War, Laws of, History).

A private committee of five citizens of Geneva undertook to put into practice without delay the suggestions made by Dunant, which were the creation on a national basis of volunteer societies to assist the army medical services, and the conclusion of an international convention for the protection of wounded soldiers and of the medical personnel caring for them. The Committee included, apart from Henry Dunant, the well-known lawyer Gustave Moynier, who for some 40 years thereafter led the movement effectively.

In 1863, the Geneva Committee – later to be named the International Committee of the Red Cross (ICRC) – convened a conference attended by official as well as unofficial personalities from 16 States which adopted a number of resolutions and recommendations concerning protection of and assistance to victims of → armed conflict. In 1864, at the request of the Committee, the Swiss Government convened in Geneva a diplomatic Conference, attended by the same States, which adopted the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The codification of the humanitarian law of armed conflict thus became and remains one of the principal concerns of the ICRC (→ Humanitarian Law and Armed Conflict; cf. → Codification of International Law).

However it was not until 1906 that, under the impact of the → Hague Peace Conference of 1899, the 1864 Geneva Convention was revised. Thenceforward there was a regular development of the Red Cross Conventions prompted by war experiences and new forms of warfare (→ Warfare, Methods and Means) as well as by the standstill of the Hague codification movement. The year 1929 saw a new revision of the original Convention and the signing of a new Convention relative to the Treatment of Prisoners of War. In 1949 came a revision of the two former Geneva Conventions (now Geneva Conventions I and III) and of Hague Convention X applying to armed forces at sea (now Geneva Convention II), as well as the adoption of Geneva Convention IV relative to the Protection of Civilian Persons in Time of War. The 1977 Protocols additional to the Geneva Conventions of 1949 witnessed the further extension of the regulated matters (see e.g. → Civil Defence; → Civilian Objects; → Open Towns).

From the very beginning, the ICRC has been concerned with the formation and development of national Red Cross Societies; until the present time, the recognition of such Societies as legitimate members of the Red Cross movement has remained its privilege. The creation of numerous National Societies, and the activities they soon developed in armed conflicts for the benefit of war victims, resulted in a need for exchange of experiences and ideas and for the tightening of mutual bonds. For this purpose, as early as 1867, the ICRC convened an International Red Cross Conference in Paris to which not only National Red Cross Societies but also the States parties to the Geneva Convention were invited to send delegates. It was the first of a series of conferences which, convened at more or less regular intervals, were to become a standing feature of the international Red Cross movement. The resolutions adopted by the International Conference have played an important role in the development of the Red Cross.

After World War I, during which they had undertaken major tasks and tremendously developed their capacities, the National Red Cross Societies sought to turn their attention to peace-time activities; to this end, they organized themselves as the League of Red Cross Societies in 1919. In 1928, a *modus vivendi* with the ICRC was agreed upon which was to govern future

collaboration between the two institutions and which formed the basis of the Statute of the International Red Cross (IRC).

From the early days of its existence, the ICRC has worked to extend practical assistance to war victims. One of the first activities it undertook was the organization in each conflict of a Tracing Agency for → prisoners of war (see also → Missing and Dead Persons). Since World War I, the Agency has become a permanent and important service of the ICRC, extending its concern to civilian war victims, → refugees and displaced persons. During World War I the ICRC also began to visit prisoners of war; the second Red Cross Convention of 1929 confirmed this function and introduced a statutory basis for it, and Convention IV of 1949 extended this prerogative to civilians in the hands of the enemy (→ Civilian Population, Protection).

World War II was a time of trial for the Red Cross in general. National Red Cross Societies had to face hard conditions and, while the League was nearly paralyzed, the ICRC had to extend its activities to the limits of its capacity: visiting great numbers of prisoners of war, organizing relief actions on their behalf and for the civilian population in occupied countries, as well as the exchange of wounded prisoners of war (→ Medical Transportation), and employing thousands of persons in its Tracing Agency. The experience acquired during these years were to find their expression in the Geneva Conventions of 1949.

Since World War I, the Red Cross movement has also been increasingly concerned with the protection of victims in → civil war situations; the ICRC undertook various activities in this regard, such as in the Russian Revolution and the → Spanish Civil War. Following World War II, on the basis of Art. 3 common to the 1949 Geneva Conventions, these activities have greatly expanded because of the increased frequency of this type of conflict. Significant relief actions were undertaken in collaboration with National Red Cross Societies and/or the League (e.g. in Greece, Biafra, Bangladesh, Cambodia), or with other organizations, such as the → United Nations Children's Fund (UNICEF). During such conflicts or in times of political tension, the ICRC began to visit so-called political detainees in countries which permitted it to do so (see generally → Human Rights and Humanitarian Law); formal agreements to this effect have been signed in recent years with some governments (e.g. Greece, Chile, Argentina). Refugees have also increasingly become the concern of the various Red Cross bodies, each according to its field of action.

The centenary of the Red Cross in 1963 was marked by the creation by the ICRC, the League and the Swiss Red Cross of the Henry Dunant Institute as a private institution under the Swiss Civil Code. According to its Statutes, the object of the Institute is to make available to the member institutions ways and means of carrying out studies, research, training and instruction in all branches of Red Cross activity, and thus to contribute to the strengthening of Red Cross unity and universality.

4. Composition

The Red Cross movement comprises various institutions, each of which possesses its own constituent instrument and carries out particular activities. The constituent parts are the International Committee of the Red Cross, the National Red Cross Societies, and the League of Red Cross Societies. The International Red Cross both embodies the totality of these institutions and forms the organizational framework created by them in order to facilitate their relations.

(a) International Committee of the Red Cross

The ICRC, which has its seat in Geneva, is a private association governed by the relevant provisions of the Swiss Civil Code. It is composed of a maximum of 25 members, all of whom are required to be Swiss citizens; the members are appointed by co-option. In this way, the Committee's neutrality and independence, which are of fundamental importance for the conduct of its activities in armed conflict situations, are guaranteed with respect to governments, including the Swiss Government. The great majority of the ICRC's staff employed in these activities are also of Swiss nationality. The qualification "international" denotes that the Committee's activities are carried out at the international level.

The ICRC maintains permanent or temporary delegations abroad, which look after its multifarious interests and represent the Committee in its relations with the national authorities, by

whom they are often accorded official status. The ICRC is supported financially by National Red Cross Societies and, particularly, by regular but voluntary contributions of governments to its ordinary budget; special accounts are opened for large-scale operations which are supported by interested governments.

According to its own Statutes and to Art. 6 of the Statutes of the International Red Cross, the special functions of the ICRC are, *inter alia*: to uphold the fundamental principles of the Red Cross; to work for the continual improvement of international humanitarian law; to take action in its capacity as a neutral institution, especially in case of war, civil war or internal strife; to endeavour to ensure that the military and civilian victims of such conflicts receive protection and assistance; and to serve, in humanitarian matters, as an intermediary between the parties. The ICRC also undertakes the tasks incumbent upon it under the Geneva Conventions and Additional Protocols, including maintaining an International Tracing Agency and visiting prisoners of war and civilian internees. It is generally accepted, furthermore, that the correct implementation of the Geneva Conventions by the States parties is a legitimate concern of the ICRC; the ICRC's competence does not, however, extend to acting as a body of enquiry. Although the Committee may take cognizance of complaints regarding violations of the Geneva Conventions and Protocols, or of international law, such complaints are not investigated but are only conveyed to the party concerned, and then only when no open channel of communication exists between the parties. The ICRC may only appoint a body of enquiry at the request of the parties, but up to the time of writing it has never done so.

The tasks of the ICRC which arise directly from the provisions of the Geneva Conventions and Protocols should be distinguished from those which flow from its right of initiative, which is likewise anchored in humanitarian law. The former activities are based on obligations, both of States and of the ICRC, from which there can be no derogation; the latter are carried out on the basis of the consent of the parties concerned.

In performing the tasks required of it, the ICRC plays a part in the application and development of international law and may be considered as a partial → subject of international law. This status finds its expression in the agreements which the ICRC concludes with States concerning, for example, the establishment of delegations, the visiting of political detainees or the exchange of prisoners of war.

(b) National Red Cross and Red Crescent Societies

National Societies are founded and organized as private associations under national law. They enjoy a special public status insofar as they must – as a condition of admission by the ICRC as part of the International Red Cross and by the League as a member – be officially recognized by their own government as the only Red Cross Society in the country and as the auxiliary of governmental health services. Moreover, municipal law should confer upon them the exclusive right of using the Red Cross emblem, as well as the legal means necessary for carrying out their tasks. This special position does not and should not in principle affect the independence of the National Societies towards their respective governments. The Junior Red Cross is organized as a section of each National Society.

In those Islamic States which have chosen to adopt the Red Crescent as their protective emblem under the Geneva Conventions and Protocols, the National Societies have also adopted it as their distinctive sign, and are named after it; this also applies to the National Society of Iran, which gave up the sign of the Red Lion and Sun in 1980. The use by National Red Cross and Red Crescent Societies of the emblems as distinctive and protective signs is the object of Regulations adopted by the XXth International Conference of the Red Cross in Vienna in 1965.

National Societies have a broad membership and carry on their activities with the participation of volunteers. In time of war, they fulfil their traditional task of supporting the military and civilian medical services; in peace-time, they prepare themselves to fulfil this function and to tackle other emergency situations. They also engage in various other public health and welfare activities according to the needs of the country, including for example, first aid, blood transfusion, nursing, social services and assistance to refugees. Although they are active mainly on the national level, National Societies are also committed to

help each other; the opportunity to participate in international relief actions enables National Societies to express in practice the ideal of human solidarity.

(c) League of Red Cross Societies

The League is the international federation of Red Cross and Red Crescent Societies. Since 1939, its seat has been in Geneva; it is endowed with legal personality as a private association under the Swiss Civil Code. To be admitted as a member of the League, a National Society must fulfil the same conditions as those laid down for recognition by the ICRC as a member of the International Red Cross; the fulfilment of these conditions is determined by the competent organs of the League. According to the League's Constitution of 1976 (as amended in 1979 and 1981), the principal organs are the Assembly of Delegates and the Executive Council. The Council is composed of 26 members. The Assembly elects a President of the League for a term of four years. The policies of the League are implemented by the Secretariat, which is headed by the Secretary-General who is appointed by the Assembly. The League acts through delegates in various countries and is financially supported by its member Societies.

The general object of the League is to promote all forms of humanitarian activities by the National Societies with a view to preventing and alleviating human suffering. According to Art. 5 of the League's Constitution, its functions are, *inter alia*: to act as a body of liaison and coordination between National Societies, and to give them any assistance they might request; to promote the establishment and development of National Societies; to bring relief by all available means to all disaster victims; to organize, coordinate and direct international relief actions in accordance with the Principles and Rules for Red Cross Disaster Relief adopted by the International Conference in 1969; and to bring help to the victims of armed conflicts in accordance with the agreements concluded with the ICRC.

(d) International Red Cross

The Statutes of the International Red Cross, adopted by the International Conference of the Red Cross at The Hague in 1928 and revised in Toronto in 1952, provide that the constituent parts of the IRC are the above-mentioned institutions. The IRC's supreme deliberative body is the International Conference, which normally meets every four years and is composed both of delegates of the constituent Red Cross bodies and of representatives of the States parties to the Geneva Conventions. The Conference is responsible for ensuring unity in the work of the Red Cross, and is competent to resolve differences of opinion between the ICRC and the League; it can also revise the IRC Statutes. The Conference cannot modify the ICRC's Statutes or the League's Constitution: on the other hand, the IRC Statutes provide that the League and the International Committee shall take no decision contrary to the IRC Statutes or to resolutions of the Conference.

The other organs of the IRC are the Council of Delegates, on which States are not represented and which is primarily responsible for preparing the Conference agenda, and the Standing Commission. The Commission is the only IRC organ which convenes between the Conferences; it is composed of five members elected by the International Conference, two representatives from the ICRC and two representatives from the League. The Commission meets twice a year and its main function is to prepare for the next Conference. The Commission may also be called upon to settle any questions which may be submitted to it by the ICRC or the League in connection with differences that may arise between them, subject to any final decision of the Conference. The IRC Statutes make provision for periodic meetings between the Chairman of the Commission and the Presidents of the ICRC and the League, to allow discussion of matters of common interest. The Statutes also require periodic contacts between the League and the ICRC to be maintained.

The IRC is to be regarded as an institution *sui generis*. It is not an inter-governmental organization, since its constituent parts are private associations governed by civil law. Nor does the presence of representatives of States in the International Conferences at which its Statutes are adopted give the former the character of diplomatic conferences. The IRC is not linked to any national law, and there is no trace of legal personality: no headquarters or seat, no permanent executive organ and no financial resources of its own (the expenses of the Standing

Commission are supported by both the League and the ICRC). The IRC is a forum for discussion based on concord between the constituent parts of the Red Cross movement and its voting procedures are understood as a means of collaboration between them. As such, the IRC has proved itself to be a valuable instrument for promoting the work of the Red Cross and maintaining the movement's unity.

5. Harmonization of Activities

The Red Cross principles lend fundamental unity to the diverse activities of the various Red Cross institutions. These activities express a purely humanitarian concern and are to be carried out in a spirit of neutrality and independence without any discrimination whatsoever, guided solely by the needs of the individual.

Each of the Red Cross institutions, however, has its separate character depending upon its particular composition, and possesses its own individual sphere of activity. These principles regulating the division of responsibilities between the ICRC and the League are contained in their respective constituent instruments and are defined in the Statutes of the IRC. The provisions of the latter are supplemented by an Agreement between the two institutions signed on April 25, 1969. The 1969 Agreement replaced a previous accord of 1951, and was subject to further interpretation in 1974. According to its provisions, the competences of the various institutions are determined by the nature of the situation in which action is required. In time of international or non-international conflict the general direction of a Red Cross international relief action belongs to the ICRC, acting as the neutral institution. In time of peace, for example in case of natural disaster, a relief action falls within the competence of the League. In situations where the two organizations are called upon to cooperate, a coordinating body is to be established and joint actions are envisaged, having due regard to the terms of the mandates entrusted to the ICRC by the Geneva Conventions and Additional Protocols, where relevant. These principles have been put into practice in some notable joint relief actions, for example in Vietnam, Cambodia and Poland.

According to the same criteria, the development of humanitarian law and the interpretation of the Geneva Conventions are tasks of the ICRC. Some activities fall within the competence of both institutions, acting jointly or separately, including the recognition of newly formed or reconstituted Red Cross Societies and their admission to the League. In the last case, to avoid discrepancy between the two decisions, which are taken separately but are based on the same criteria, a joint examination of the files takes place beforehand.

The question of coordination between National Societies themselves and with the League in regard to international disaster relief actions is regulated by the Principles and Rules for Red Cross Disaster Relief, adopted by the XXIst International Conference of the Red Cross (Istanbul, 1969, Res. XXIV). These Principles and Rules, which have been revised and updated a number of times, codify the practical experience of the members of the Red Cross in humanitarian assistance and constitute an important development in the large body of resolutions, extending back to 1863, regulating Red Cross disaster relief activities (→ Relief Actions).

The harmonization of the activities of the various Red Cross bodies contributes to the effectiveness of Red Cross action in general and to the dissemination of the Red Cross ideal.

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DENISE BINDSCHEDLER-ROBERT

REFUGEE ORGANISATION, INTERNATIONAL *see* International Refugee Organisation

REFUGEES, LEAGUE OF NATIONS OFFICES

1. History

The Covenant of the → League of Nations, stipulated in Art. 23 that the members of the League would endeavour to improve social conditions in a number of fields, without, however, mentioning protection of or assistance to → refugees. Yet one of the pressing problems which arose in the wake of World War I and the ensuing revolutions was the exodus of great masses of human beings who had to seek refuge in foreign countries (→ Peace Treaties after World War I; → Population, Expulsion and Transfer). It was soon obvious that the task of helping refugees went far beyond the capabilities of charitable organizations. After consultation with other important organizations, Gustave Ador, President of the International Committee of the → Red Cross (ICRC), in a letter of February 20, 1921, appealed to the Council of the League and proposed that the League should appoint a Commissioner for Russian Refugees.

Six days later, the Council passed its first resolution on refugees. On June 27, 1921 the Council decided to authorize its President to appoint – after obtaining the approval of his colleagues" – a High Commissioner for Russian Refugees. In August 1921 Fridtjof Nansen, the Norwegian explorer, scientist, and statesman, accepted the appointment as High Commissioner. As the Armenian and Greek refugee problems became urgent, the word "Russian" was deleted from his title.

In 1925 Nansen's staff, with the Assistant High Commissioner, Major Thomas Frank Johnson, at its head, was transferred to the → International Labour Organisation, where it became the Refugee Service, responsible for the technical matters of employment, settlement, and migration (→ Migration Movements), while the High Commissioner remained responsible for protection. The split caused many problems, and by the end of 1929 the functions undertaken by the ILO were transferred back to the High Commissioner.

Upon Nansen's death in 1930, the Assembly of the League decided to entrust the legal and political protection of refugees to the regular organs of the League. At the same time an autonomous Nansen International Office for Refugees was established to take charge of the humanitarian work for a limited period, which was subsequently fixed to terminate by the end of 1938. The Nansen Office, which began its work on January 1, 1931, with Dr. Max Huber, President of the ICRC, as its first President and Major Johnson as Secretary-General, was placed under the authority of the League in conformity with Art. 24 of the Covenant of the League of Nations.

To cope with the rising problem of German refugees, the Assembly decided in 1933 to vest responsibility for the new problem in a High Commissioner for German Refugees, who should report to a separate Governing Body rather than to the Council of the League. The High Commissioner, the American James McDonald, got little or no support, and in 1935 he resigned. His letter of resignation is an important public document. In October 1935 Germany left the League of Nations, and the new High Commissioner, Sir Neill Malcolm, was granted an improved status.

In July 1938, upon an initiative of United States President Franklin Delano Roosevelt, an Intergovernmental Committee on Refugees (IGCR)

was created for the purpose of aiding potential and actual refugees from Germany and Austria.

With effect from January 1, 1939, the Nansen Office was merged with that of the High Commissioner, and Sir Herbert Emerson became High Commissioner for "all" refugees. In February 1939, he also assumed the responsibilities as Director of IGCR, and during World War II the IGCR, with an extended mandate, was in fact the main vehicle for aid to refugees. The Committee found its place besides the Allied armed forces and the United Nations Relief and Rehabilitation Administration (UNRRA) in performing the task of protecting and assisting refugees in liberated territories and occupied Germany (→ United Nations Relief and Rehabilitation Activities).

The High Commissioner's Office ceased formally to exist on December 31, 1946, and the IGCR transferred its tasks to the Preparatory Commission for the → International Refugee Organisation (PCIRO) on July 1, 1947.

2. Finances; Achievements

The financing of the refugee operations was a continuous problem. The League of Nations paid only for administrative expenses. For the ten years 1921 to 1930, the administrative budget totalled less than 2.8 million Swiss gold francs. Like the first High Commissioner, the Nansen Office and the subsequent High Commissioners had to operate on shoestring budgets.

Funds to help refugees had to be solicited from governments, voluntary organizations, and private individuals, largely on an *ad hoc* basis. The only regular, if modest, sources of revenue were the five gold francs paid by the refugees (except the most destitute) for the Nansen stamps on their identity certificates, and during the 1930s the proceeds of surcharged postage stamps sold in Norway and France.

In spite of the limited availability of funds, the achievements were impressive.

Arrangements concerning "certificates of identity" for refugees (later known as "Nansen passports"; → Passports) were adopted in 1922, 1924, 1926 and 1928, and an agreement on travel documents in 1946 (UNTS, Vol. 11, p. 73). The Arrangement relating to the Legal Status of Russian and Armenian Refugees, adopted in 1928 (LNTS, Vol. 89, p. 53), was followed by the Convention relating to the International Status of Refugees, 1933 (LNTS, Vol. 159, p. 199) and the Convention concerning the Status of Refugees coming from Germany, 1938 (LNTS, Vol. 192, p. 59).

Every year the Assembly and the Council of the League of Nations adopted resolutions concerning refugees. The various offices did much to solicit and coordinate assistance to those categories of refugees for whom the League assumed responsibility. One of Nansen's great achievements was the orderly transfer of Greeks from Turkey and Turks from Greece, involving some two million persons (→ Exchange of Greek and Turkish Populations (Advisory Opinion); → Lausanne Peace Treaty (1923)).

If the official involvement of the League of Nations was half-hearted, there were individuals in leading positions whose selfless enthusiasm and compassion turned the refugee operation into one of importance and consequence.

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ATLE GRAHL-MADSEN

REFUGEES, UNITED NATIONS HIGH COMMISSIONER

1. History

On July 1, 1947, the Preparatory Commission for the International Refugee Organisation (PCIRO) assumed responsibility for pre-war → refugees and wartime displaced persons (→ Population, Expulsion and Transfer). Up to that date, responsibility had lain with the Intergovernmental Committee on Refugees (IGCR) and the United Nations Relief and Rehabilitation Administration (UNRRA) (→ Refugees, League of Nations Offices; → United Nations Relief and Rehabilitation Activities). In August 1948, PCIRO was superseded by the → International Refugee Organisation (IRO), a temporary specialized agency of the United Nations (→ United

Nations, Specialized Agencies), which operated until January 1952. The IRO assumed responsibility and provided legal and political protection, care and maintenance for approximately 1.6 million refugees, including "displaced persons". Of these, a little over a million were helped to resettle in various countries, and nearly 73000 were helped to return to their home countries. The IRO left, however, a legacy or "hard core" of approximately 400000 refugees.

By Resolution 319 (IV) of December 3, 1949, the → United Nations General Assembly decided to establish, as of January 1, 1951, a High Commissioner's Office for Refugees. This office was intended to take care of refugees who had been the concern of the IRO and such other persons as the General Assembly would from time to time determine. By Resolution 428 (V) of December 14, 1950, the General Assembly adopted a Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR).

The UNHCR was established on a temporary basis. The first three-year mandate has subsequently been extended for five-year periods, the present period expiring on December 31, 1983 (Res. 32/68 of December 8, 1977).

The Statute has never been formally amended, but it has in fact been abridged and supplemented by a succession of General Assembly resolutions which further define the High Commissioner's functions and considerably broaden his mandate.

The following have been High Commissioners: Gerrit Jan van Heuven Goedhart, formerly Netherlands Minister of Justice, 1951–1956; Auguste R. Lindt, Swiss diplomat, 1956–1960; Félix Schnyder, Swiss diplomat, 1961–1965; Prince Sadruddin Aga Khan, 1966–1977; Poul Hartling, former Danish Prime Minister, since 1978 (term expires December 31, 1982).

2. *Structure*

(*a*) *The High Commissioner and staff*

The Office of the High Commissioner for Refugees is a subsidiary organ of the General Assembly, established in conformity with Art. 22 of the → United Nations Charter.

The High Commissioner is elected by the General Assembly, on the nomination of the → United Nations Secretary-General, for a fixed term, normally of five years. The term may be extended. The High Commissioner appoints, for the same term, a Deputy High Commissioner, who must be of a → nationality other than his own, and the staff of his Office, who are responsible to him in the exercise of their functions. With the exception of the term of Prince Sadruddin Aga Khan (1962–1965) as Deputy High Commissioner, this post has always been held by a United States citizen.

In the tradition of Fridtjof Nansen (the League of Nations High Commissioner for Refugees) and with the approval of the respective governments, the UN High Commissioner maintains representatives in a great number of countries where refugees reside (Chap. III of the Statute). The UNHCR headquarters is situated at Geneva.

(*b*) *Executive Committee*

By Resolution 1166 (XII) of November 27, 1957, the General Assembly requested the → United Nations Economic and Social Council (ECOSOC) to establish an Executive Committee of the High Commissioner's Programme (EXCOM; A/AC.96). It was to consist of representatives of a number of States to be elected by the Council on the widest possible geographical basis from those States with a demonstrated interest in, and devotion to, the solution of the refugee problem. The original membership of 24 States has successively been increased to 40 States (cf. Res. 33/25 of November 29, 1978).

The Executive Committee, which meets annually, advises the High Commissioner, at his request, in the exercise of his functions under the Statute. More particularly, it advises him whether and to what extent international assistance should be provided through his office in order to help solve specific refugee problems.

(*c*) *Reporting and decision-making*

The High Commissioner is obliged to follow policy directives given him by the General Assembly or ECOSOC, and also to abide by directions which the Executive Committee of the High Commissioner's Programme might give him in regard to situations concerning refugees (e.g., Res. 1673 (XVI) of December 18, 1961).

After having been considered by the Executive Committee, the High Commissioner's annual report is submitted, as stipulated in the Statute, to the General Assembly through ECOSOC. His

report is considered as a separate item on the agenda of the General Assembly. The High Commissioner is entitled to present his views before both the General Assembly and ECOSOC. The High Commissioner maintains a representative at the UN headquarters in New York.

Apart from the UNHCR report, the General Assembly also frequently deals with particular refugee situations as special items; it has passed many resolutions on such matters (UN Resolutions and Decisions relating to the Office of the UNHCR).

(*d*) *Finances*

The Office of the High Commissioner is financed under the UN budget, but as a rule the UN covers only administrative expenses. All other activities of the High Commissioner must be financed by voluntary contributions from States, → non-governmental organizations, and individuals. However, the High Commissioner may not appeal to governments for funds or make a general appeal without the prior approval of the General Assembly or, on its behalf, the Executive Committee. Such approval is regularly granted, and a pledging conference, where governments announce their willingness to contribute to the High Commissioner's programme, has become an annual event.

3. *Activities*; *Competences*

The High Commissioner's activities fall under two main headings: protection of refugees and assistance to refugees. The assistance includes two activities especially mentioned in the Statute, namely aid for resettlement and for → repatriation.

In addition, with the consent of the General Assembly, the High Commissioner serves as the international body called for under the Convention on the Reduction of Statelessness of August 30, 1961, to which persons claiming the benefit of the Convention may apply for the examination of their claims and for assistance in presenting them to the appropriate authority (Res. 31/36 of November 30, 1976; → Stateless Persons; → Asylum, Territorial).

According to the Statute, the work of the High Commissioner is to be of an entirely non-political character; it is to be humanitarian and social (→ Human Rights and Humanitarian Law). Also, "it shall relate, as a rule, to groups and categories of refugees". The latter proviso was included mostly for financial reasons, and it has not prevented the High Commissioner from espousing the interests of individual refugees. Thus, the High Commissioner may make individual eligibility decisions as well as collective decisions of "group eligibility" covering entire categories of refugees (→ Individuals in International Law).

The competence of the High Commissioner extends to refugees as defined in the Statute and in subsequent resolutions of the General Assembly. These are known as "mandate refugees". In addition, the High Commissioner may extend his → good offices to other categories of refugees and persons in a similar predicament.

According to Art. 6 of the Statute, eligibility extends to persons recognized as refugees or displaced persons under international pre-World-War-II instruments or by the IRO. It also includes persons who are outside their home country due to well-founded fear of persecution for reasons of race, religion, nationality, or political opinion (→ Discrimination against Individuals and Groups; → Racial and Religious Discrimination; → Human Rights; → Minorities). The definition is without the geographical and temporal restrictions found in Art. 1 of the Convention relating to the Status of Refugees of July 28, 1951.

Particularly noteworthy is General Assembly Resolution 34/60 of November 29, 1979, as it confirms, at least in so far as assistance is concerned, the competence of the High Commissioner to deal with "problems of refugees and displaced persons wherever they occur". The term "displaced persons", as used in this resolution, differs from the same term as used in the context of the IRO and apparently includes even persons displaced within their own country (cf. Art. I(2) of the Convention governing the Specific Aspects of Refugee Problems in Africa of September 10, 1969 of the → Organization of African Unity).

Legally, the most interesting of the High Commissioner's activities are those of protection, which in the IRO period was called "legal and political protection". Now it is generally referred to as "international protection", in contradistinction to → "diplomatic protection" or "functional protection" (→ Protected Persons).

According to the Statute, protection encompasses a number of activities. It ranges from the

promotion of international conventions and other agreements through → negotiations (to encourage admission of refugees and their integration into social life in their new environments) to collection of statistical data. It also entails generally keeping in touch with governments and interested organizations in order to improve the lot of refugees in every conceivable way.

Just as the refugee problem has become chronical, the UNHCR has become an indispensable instrument for international action in a sensitive humanitarian area. The Office of the UNHCR has twice won the Nobel Peace Prize: in 1954 for its work in Europe with post-World-War-II refugees and in 1981 for its work with refugees world-wide.

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ATLE GRAHL-MADSEN

RELIEF AND REHABILITATION ACTIVITIES OF UN *see* United Nations Relief and Rehabilitation Activities; Relief Actions

REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS *see* Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS *see* International Organizations, Responsibility

RULES OF PROCEDURE IN INTERNATIONAL ORGANIZATIONS *see* International Organizations, Internal Law and Rules

SAN FRANCISCO CONFERENCE (1945) *see* United Nations

SATELLITES, INTERNATIONAL CO-OPERATION *see* Inmarsat; Intelsat; International Telecommunication Union; Satellites in Space

SPECIAL DRAWING RIGHTS *see* International Monetary Fund

SPECIALIZED AGENCIES OF UN *see* United Nations, Specialized Agencies

STRATEGIC AREAS

1. The Concept and its Development

Strategic areas, as regulated in Arts. 82 and 83 of the → United Nations Charter, are territories under the → United Nations Trusteeship System, for which the functions of the → United Nations are exercised by the → United Nations Security Council. According to Art. 83(3), the Trusteeship Council assists in performing those functions relating to political, economic, social and educational matters; thus matters concerning security are excluded. Since Arts. 88 and 87 of the Charter apply only to trust territories under the competence of the → United Nations General Assembly, the administering authority of a strategic area is not obliged to submit annual reports; nor are the provisions on petitions or visiting missions applicable. The supervisory functions of the Security Council are thus more limited under the Charter than the corresponding functions of the General Assembly, and consequently the assistance functions of the Trusteeship Council are also limited.

In substance, strategic areas are → non-self-governing territories, and therefore the principles of Art. 73 of the Charter regarding the fundamental guidelines governing the system also bind the administering authority. According to Art. 83(2), the basic objectives set forth in Art. 76 for the trust territories are applicable "to the people of each strategic area". This reference to "the people" was used to reduce the open-door policy provided for in Art. 76(d) to a → most-

favoured-nation clause in the terms of the trusteeship agreement for the only strategic area so far established.

A trust territory or parts thereof obtains the status of a strategic area by being designated as such in the trusteeship agreement (Art. 82). The Charter sets out no substantive prerequisites for such a designation, but from the use of the term and the exclusion of the Trusteeship Council from security matters it can be concluded that a special security interest of the State concerned must be assumed for establishing this kind of trusteeship. On the other hand, Art. 84 of the Charter shows that security considerations can be dealt with in a trusteeship under the competence of the General Assembly.

The special rules on strategic areas were suggested by the United States in the consultations with the States who were to become the other permanent members of the proposed Security Council at the beginning of the San Francisco Conference in April 1945; these rules formed sections 6 and 7 of the United States proposal for a new chapter on trusteeship, submitted to the conference on May 5, 1945 (UNCIO Doc. 2, G 26(c), Vol. 3, pp. 607–608). The idea had developed as a compromise between different objectives of United States foreign policy. On the one hand, the United States Government, especially the Department of State, pleaded for a general system of → decolonization, after a transitional period of international trusteeship; thus it was planned to place under the UN trusteeship system the → Pacific Islands which had been administered by Japan under a → mandate from the → League of Nations, and which, in 1944, were captured by United States forces. On the other hand, the military authorities, primarily the Navy, requested that these islands remain under the unrestricted control and disposal of the United States, as being indispensable to national security. Since the United States, under the first point of the → Atlantic Charter (1941), had declared that she did not seek territorial aggrandizement, an → annexation of the islands was excluded. The idea of conferring the United Nations' responsibility for special kinds of trust territories, called strategic areas, on the Security Council instead of on the General Assembly, was developed in spring 1945 in joint consultations between the Departments of State, War, the Interior, and the Navy. The United States planned to have the Pacific Islands placed as a strategic area under the trusteeship system, and to assume the position of the administering authority. As a permanent member of the Security Council, empowered with the right of → veto according to Art. 27(3) of the Charter, the United States foresaw being able to prevent any undesirable interference by the UN. Sections 6 and 7 of the United States proposal became Arts. 82 and 83(1) of the UN Charter, the proposal being amended by the additions of paras. 2 and 3 of Art. 83.

2. Application

The only strategic area in the sense of Arts. 82 and 83 of the Charter is the trust territory of the Pacific Islands. It comprises, with the archipelagos of the Marshalls, the Carolines and the Marianas (excluding Guam), more than 2100 islands scattered over an area of more than 7.8 million square kilometres. These islands, about 100 of which are inhabited, have a combined land area of about 1850 square kilometres. The total population was estimated in 1980 at 136500. Nine distinct languages with variations of dialects are spoken in the territory.

In 1899 Spain, as the colonizing power in the area, sold the islands to Germany, which governed them until 1914, when they were captured by Japanese forces. In 1920 they became a Japanese mandate under the supervision of the League of Nations. They were categorized as a C Mandate under Art. 22(6) of the League's Covenant, deeming them unsuitable, due to special circumstances, for development into self-governing States. In 1944 forces of the United States Navy occupied the islands.

The United States proposed a draft trusteeship agreement to the members of the Security Council and to New Zealand and the Philippines. The United Kingdom, Australia and New Zealand expressed some doubts that the trusteeship could be established before a peace treaty with Japan, as the former mandatory, was concluded. After some deliberation, the Security Council unanimously approved the trusteeship agreement on April 2, 1947 (SC Res. 21 (1947); UNTS, Vol. 8, p. 189). The Resolution took into account that Japan was no longer functioning as mandatory

and that according to Art. 79 of the Charter only those mandatory powers which are members of the UN were to be considered to be States "directly concerned", whose agreement was necessary to place a territory under the trusteeship system. This decision did not infringe the rights of the victorious powers of the Pacific Theatre, because they were either members of the Security Council or they participated in the deliberations on the basis of invitation. In Art. 2(d) of the → Peace Treaty with Japan (1951), the former mandatory waived all her rights and title and recognized the establishment of the UN trust territory over the Pacific Islands.

In Art. 1 of the trusteeship agreement for the Pacific Islands the trust territory is designated as a strategic area. The administering authority is the United States (Art. 2). In most aspects the agreement corresponds to the trusteeship agreements for the eight territories approved by the General Assembly in 1946 (UNTS, Vol. 8, p. 71). Going further than the proposed draft, Art. 6(1) states as the objective of the trusteeship "self-government or independence". According to Art. 15, the agreement can only be altered, amended or terminated with the consent of the United States. The generally applied open-door policy to all UN members (Art. 76(d)) was changed in Art. 8(1) of the agreement to a most-favoured-nation clause.

3. Functioning

Art. 13 of the trusteeship agreement states that Arts. 87 and 88 of the Charter, which by their terms apply only to territories under the supervision of the General Assembly, are also applicable to the Pacific Islands, with the exception of "any areas which may from time to time be specified ... as closed for security reasons". Since 1947, the administering authority has made use of the exemption clause only for the nuclear testing in the Marshall Islands, Enewetok and the Bikini Atolls (→ Nuclear Tests). In practice, however, the Trusteeship Council deals with the annual report of the administering authority and with petitions from the Pacific Islands and sends out visiting missions in the same manner as for the trust territories under the supervision of the General Assembly. The Trusteeship Council submits an annual report with respect to the strategic area to the Security Council.

Since the termination of the last regular trusteeship (for New Guinea in 1975), the strategic area of the Pacific Islands has become the only UN trust territory, and the United States the only administering authority. Thus the Trusteeship Council consists of the United States under Art. 86(a) and the other permanent members of the Security Council pursuant to Art. 86(b) of the Charter. There are no members elected under Art. 86(c), as it became impossible to balance the number of administering and non-administering members as provided for under that paragraph. Since, however, in the last instance only the Security Council could take supervisory measures and the United States could use its right of veto in that body, this situation is not unacceptable to the only administering authority.

4. Development towards Termination of the Trusteeship

Originally, the trust territory was administered in six districts: the Marianas, the Marshalls, Palau, Yap, Truk and Ponape. The inhabitants participated locally in some administrative functions. In 1965 the administering authority established the Congress of Micronesia as a legislative body, with two senators from each of the six districts and 24 members of the House of Representatives.

At the request of this Congress, negotiations on the area's future status were opened in 1969, but they were interrupted in 1972 when the leadership of the Marianas District asked for separate negotiations with the United States. The Marianas were able to negotiate a special relationship, and the parties agreed in February 1975 on a special Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. This agreement was approved by a → plebiscite held under the supervision of a special mission of the Trusteeship Council on June 17, 1975 and by the Congress of the United States by Public Law 94–241 of March 24, 1976 (text: 48 USC § 1681 and UN Doc. T/1759). The Trusteeship Council noted with satisfaction that parts of the arrangements took effect in January 1978, while other parts would do so upon the termination of the trusteeship agreement for the trust territory as a whole. The

Covenant provides for a political union with and under the sovereignty of the United States, for internal self-government, for United States citizenship for the inhabitants, and for financial aid to the territory.

The Marianas having left the Congress of Micronesia, the Congress convoked a constitutional convention for Micronesia, which proposed a draft constitution for the proposed Federated States of Micronesia in November 1975. In a referendum held on July 12, 1978, Yap, Truk, Ponape and the newly established district of Kosrae adopted a constitution and formed the Federated States of Micronesia. The Marshall Islands and Palau rejected that draft. The Marshall Islands adopted their own constitution in a referendum held on March 1, 1979. After some initial difficulties, the Palau Constitution was accepted in a referendum held on July 9, 1980.

The negotiations between the United States and the three entities – the Marshalls, the Federated States of Micronesia and Palau – led to the agreement of April 9, 1978 on principles for Micronesia, known as the Hilo (Hawaii) Principles (text: Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands, 1977–1978, UN SC Official Records, 33rd year, Special Supp. No. 1, p. 75). They provide for agreements of free association with the United States (→ United States, Dependent Territories), as distinguished from independence. The principles give Micronesia full internal self-government, and competence over questions of foreign affairs (after → consultation), including competence over → marine resources. The United States retains competence on matters of security and defence for 15 years, and thereafter as mutually agreed, and is to provide financial aid (→ Economic and Technical Aid). The compacts must be adopted by referenda under the supervision of the UN, and they may be terminated unilaterally (→ Treaties, Termination), subject to the continuation of the United States competence in security matters, by referenda as well.

Within the framework of these principles, a compact was initialled for the Marshall Islands and the Federated States of Micronesia on October 31, 1980, on November 17, 1980 for Palau (text: Brooklyn Journal of International Law, Vol. 7 (1981) 283–327). The compact was signed for the Marshalls on May 30, 1982, together with six subsidiary agreements, the two other governments are expected to follow suit soon. After approval of these compacts by referenda and by the United States Congress, proceedings are to be initiated to terminate the trusteeship agreement.

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See also the article on → United Nations Trusteeship System.

DIETRICH RAUSCHNING

SUCCESSION OF INTERNATIONAL ORGANIZATIONS *see* International Organizations, Succession

SUPRANATIONAL ORGANIZATIONS

1. Notion

The use of the term "supranational" to distinguish a category of international organizations is fairly recent. So far, the term has been used descriptively and has not acquired a distinct legal meaning; thus it may be said that the definition of the term is subject to different interpretations. However, the historical development of the usage of the term permits identification of the essential elements of supranational organizations in contrast to more traditional forms of international organizations. The notion became the subject of debate in 1950, following the French proposal from which the → European Coal and Steel Community (ECSC) originated. The first legal instrument in which the term "supranational" appeared (albeit in a limited context) was the Treaty of Paris of April 18, 1951 establishing the ECSC. From that time onwards, various points of view have been advanced as to the limits of the notion and in particular as to the possibility of extending it to legal entities other than the → European Communities. Even today the precise legal meaning of "supranationality" has not been fixed. In these circumstances, reference will be made to the origins of the word and to the reasons why it gained currency, in order to facilitate the ascertainment of its present usage.

2. Historical Background

Certain significant episodes from the preparatory stage of the Treaty of Paris are worthy of mention. On June 20, 1950 when Robert Schuman, the French Minister of Foreign Affairs, inaugurated the conference called to discuss his famous Plan, he emphasized, *inter alia*, the novelty of the idea that States "should delegate in common a portion of their sovereignty to an independent supranational body". On July 25 Schuman explained to the French National Assembly the essence of his proposal as being "the creation of a supranational authority beyond the sovereignty of the national States ...." A French memorandum of August 10 further emphasized the objective "of establishing, in a particular field, a supranational system".

In order to understand these expressions it is necessary to recall that the central point of the Schuman Plan was to "place the whole Franco-German coal and steel production under one joint High Authority, in an organization open to the participation of the other countries of Europe" (Schuman Declaration of May 9, 1950). It will be noted that the ECSC took on its final form only after the Paris → negotiations and that the only institution mentioned in the initial French proposal was the High Authority. However, the Plan already provided that the High Authority should be composed of independent persons and would be capable of taking decisions enforceable in all States adhering to the Plan. Accordingly, the description of the institution as "supranational" summarized in political terms the two original characteristics concerning the composition and powers of the institution which was to be set up. The next expression thus implied that the High Authority would be composed of persons whose status was not that of delegates of → States (and who would therefore not be bound by the orders of national governments) and would control the common market of coal and steel by binding acts having direct effect (i.e. without the need for the constant cooperation of the national legislatures).

In the official French declarations of 1950, the supranationality referred either to the High Authority or to the whole system. Art. 9, para. 5 of the ECSC Treaty made a more restrictive reference, defining the duties of the members of the High Authority as supranational in character – a definition which was in fact provided in the context of a provision intended to ensure the independence of those members. Shortly afterwards, however, Art. 1 of the Treaty establishing the → European Defence Community (which was signed on May 27, 1952 but was not brought into force owing to the opposition of the French National Assembly (→ Treaties, Conclusion and Entry into Force)) expressly conferred "supranational character" on that Community. This trend was pursued by the authors of the draft treaty establishing the → European Political Community which was drawn up in March 1953 by an *ad hoc* assembly (composed in large part of members of the Assembly of the ECSC). Art. 9 para. 5 ECSC Treaty was subsequently repealed by Art. 19 of the Merger Treaty of April 8, 1965

which established a single Council and a single Commission for all three European Communities (the ECSC, the → European Atomic Energy Community (Euratom) and the → European Economic Community (EEC)).

3. Criteria for Distinction

Having regard to the documents cited and to the opinion of the majority of legal writers on the question, supranationality may be understood first of all as a characteristic inherent in certain international organizations (→ International Organizations, General Aspects). As explored below, the same expression has a more limited application, referring to specified bodies or to their powers within the framework of organizations not of a supranational nature; moreover, supranational organizations also have some powers other than supranational ones. Subject to these important reservations, it is possible to talk of a category of supranational organizations.

The criterion for distinguishing such a category is essentially functional: That is to say, it is on the basis of the principal functions with which the ECSC is entrusted (the exercise of powers withdrawn from the → sovereignty of the member States) that it was defined as supranational rather than international. On the same ground, the drafts for the European Defence Community and the European Political Community treaties expressly adopted the new term. On the same line of reasoning, there is justification for drawing a distinction within the sphere of the organizations set up by States under international agreements.

Comparison of the ECSC with the other international organizations is necessary and fruitful; in fact, if the term "supranationality" was employed with regard to the former while it had not been used in previous cases, it was because the system established by the ECSC Treaty displayed certain novel aspects.

The ECSC system was considered distinctive because of the following characteristics: (a) three of the four institutions were composed of persons who were not representatives of governments (the High Authority, the Assembly and the Court of Justice); (b) all of the institutions, including the Council, were intended to take their decisions by a majority vote (→ Voting Rules in International Conferences and Organizations); (c) the ECSC was vested with power to adopt binding acts; (d) certain of these acts had direct effects on individuals and undertakings; (e) the provisions of the Treaty and measures adopted by the institutions constituted as a whole a new legal order (→ European Law); (f) within the framework of that order, the fulfilment of member States' obligations and the validity of Community acts were subject to review by the Court of Justice.

Nevertheless, it is important to note that not one of these characteristics (except the last, at least in part) was entirely new. In fact, bodies composed of one or more individuals not representing their governments had already been created by the constitutions of the → International Labour Organisation (the International Labour Office), and of the → Council of Europe (the Consultative Assembly and the Secretariat), and by the → United Nations Charter (the → International Court of Justice and the → United Nations Secretary-General), not to mention bodies having a structure equivalent to that of a secretariat which exist in many of the → United Nations Specialized Agencies (see also → Parliamentary Assemblies, International; → International Secretariat). The majority voting rule, usually a qualified majority, applies to all the UN organs and to those of the Specialized Agencies. Power to adopt acts binding on the member States (through procedures other than the agreement of their representatives) is vested in the → United Nations Security Council, within the limits fixed by the UN Charter; even the → United Nations General Assembly possesses that power with regard to financial contributions. Some examples of acts adopted by an international body having binding effect and addressed to individuals were traditionally found in international fluvial commissions (e.g. the European Danube Commission of 1858; → International Rivers) and in joint → arbitration tribunals; there may be added the recent cases of international administrative tribunals (→ Administrative Tribunals, Boards and Commissions in International Organizations) and of the International Centre for the Settlement of Investment Disputes (→ Investment Disputes, Convention and International Centre for the Settlement of). The concept of an independent legal order had already been applied with reference to the UN, including

in its scope the provisions of the Charter and the practice of the UN bodies. Finally, the competence of a judicial body to ascertain that obligations undertaken by the parties to a treaty are fulfilled may always be provided for through a binding arbitration clause (→ Arbitration Clause in Treaties); what was unprecedented was the review by such a body of the validity of the acts of an international organization.

These observations lead to the conclusion that the novelty of the system set up by the ECSC Treaty did not reside in one or another of the various aspects which have been listed above, but rather in their cumulative presence. In particular, the decision-making process was of first importance not only because decisions were to be adopted principally by a body not subject to the influence of governments, but also because of the wide range of matters over which they were intended to apply, of the power vested in the Community to bind member States and individuals, and of the right recognized to the institutions, the States and, to a certain extent, the individuals to apply to the Court of Justice in order to challenge, and provide for judicial control over, the legality of decisions. It is submitted that it is basically the combination of three factors – the actual "independence" of the decision-making machinery, the direct relations between the international authority and individuals, and the existence of a legal system with its own judicial body – which distinguishes the ECSC from previous international entities. Consequently, it is the combination of these three factors which determines the supranational character of the Community which was established in 1951 and of all other similar organizations.

4. *Supranationality, Integration and Federalism*

This analysis accords also with a parallel which exists between the notion of supranationality and that of integration, as well as with the theory that links between supranationality and the federal nature of the ECSC (→ Federalism in the International Community). With regard to integration, it is true that the term has remained in the political language without entering the legal vocabulary; nevertheless, the ECSC and the other two European Communities are frequently represented in studies of European organizations as forms of integration in contrast to phenomena of mere cooperation such as the → Organisation for Economic Co-operation and Development (OECD), the → Western European Union and the Council of Europe. The points which this characterization is intended to stress are the particular closeness of the links between the participating States and the tendency towards a form of highly-organized union, capable of extensively involving citizens as well as governments. The factors expressing this tendency are to be discerned, firstly, in the structure of the European Communities – characterized by their independence *vis-à-vis* the member States – and, secondly, in the Communities' possession of certain legislative, administrative and judicial powers which make them "governing powers" alongside the States. From this point of view, too, the particular elements of supranationality emerge.

With regard to the theory which affirmed the semi-federal nature of the ECSC, there can be no doubt that it was mistaken in so far as it endeavoured to adapt an instrument of classification proper to the theory of the State to the different reality of an international organization. That theory was, however, influenced by certain aspects of this reality, whose importance it exaggerated: the transfer to the Community of part of the sovereign powers of the member States. Proponents of this theory subsequently placed the emphasis on the existence in Community law of provisions directly affecting individuals (and also taking priority over national law) and on the existence of a Court of Justice endowed with certain powers similar to those of a federal court. This amounts to saying that the writers who perceived the ECSC as a semi-federal entity based their views on the assumption that it possesses supranational powers and considered – wrongly – this fact sufficient to transfer the phenomenon from the sphere of international organizations to that of federal institutions.

5. *Analytical Approaches*

As stated, very widely varying opinions are held on the concept of supranationality. The majority of writers share the view, initially advanced by Paul Reuter, the jurist who was directly involved in the preparation of the Schuman Plan, that the supranational nature of an organization depends

on the conjunction of certain characteristics. Amongst jurists of this group it is generally regarded as necessary that the organization actually be independent of governments and have power to bind individuals by means of decisions having direct effect.

A third element is seen by Reuter in the transfer of State powers; there is, however, reason to doubt whether it is proper to distinguish this from the power to bind individuals directly. It is in fact clear that the grant of that power always entails a limitation in the field of State sovereignty, whilst the powers assigned to the organization need not invariably correspond to pre-existing powers of the States. Certain authors emphasize also the importance of the extent of the powers, and thus of the number of fields in which the organization is able to intervene; it is, however, evident that the endeavour to find a quantitative limit is pointless. On the other hand, it is an excessive requirement to restrict, as some writers suggest, the attribute "supranational" to political organizations; the question should then be raised whether the ECSC, Euratom and the EEC themselves should be considered political entities. Likewise, the view that "technical" organizations should be excluded from the category of supranational organizations cannot be endorsed. The truth is that, in the case of many organizations, including the European Communities, it is necessary to resolve the problem of the relative balance between tasks involving the coordination of the activities of governments and supranational powers; the latter have so far constituted only part of the powers of the organization, but if their role is essential and if their exercise contributes to the development of the legal order of the organization, there is then reason to find that the organization as a whole is of a supranational nature.

This last consideration renders it impossible to disregard the factor of the existence of a legal order having as subjects both the member States and individuals, when reference is made to supranational organizations (and not merely to supranational bodies; see → Subjects of International Law; → Individuals in International Law). Furthermore, the interdependence of the three characteristic elements of supranationality should be emphasized here. The actual independence of the organization with regard to the member States manifests itself not only in the composition of certain organs but above all in the existence of a system of rules, which thus distinguishes it from both international and municipal law (→ European Communities: Community Law and Municipal Law). Power to influence the conduct of individuals directly is exercised within the framework of a legal system to which the individuals, together with the member States, are subject. Finally, the development of the system depends in large measure on the general rules which the organs are able to create.

All this implies that those interpretations of supranationality which emphasize one characteristic only are inadequate. In this connection, it must be observed again that many writers who take the so-called independence of a given organ (e.g. the High Authority of the ECSC) with regard to the governments as their sole criterion end by describing it as supranational, but in so doing are unable to resolve the problem of the conditions on which the supranational nature of the organization as a whole depend. Furthermore, independence with regard to the governments is of importance only in so far as the organ possesses decision-making powers; otherwise, any international commission of experts might be defined as "supranational" even though its task was merely to make studies or proposals or to proffer advice. This means that, in establishing whether an organ is supranational, both its structure and function must be taken into consideration. The need for the concomitant presence of at least two elements is thus ultimately recognized even by those who restrict their consideration to supranational organs.

6. Etymological Approaches

Some writers have endeavoured to analyse the term "supranational" from an etymological point of view, in order to derive assistance in defining its content. This road does not lead one very far. If "nations" are understood in the sense of States it is easy to observe that any organization of States may be classified as supranational, since any agreement establishing an organization imposes certain obligations on the States and, in that sense, places the organization "above" its members. It would certainly be a more selective ap-

proach to identify supranationality with the power of certain organizations by themselves to create obligations on the member States through acts of their organs – in other words, by adopting decisions binding on such States (→ International Legislation). However, in certain respects many organizations possess such powers (e.g. power to fix financial contributions, create new organs or, sometimes, amend constituent instruments). In any case, to distinguish between "international" and "supranational" organizations on the basis of the mere existence of the power (albeit very limited) to adopt decisions binding member States would be a formalist solution unsuited to reproducing the variety and flexibility of contemporary models of international organizations which have at their disposal a wide range of means for applying pressure in order to influence the conduct of States (→ International Obligations, Means to Secure Performance).

On the other hand, it is doubtful whether "supranational" should be understood as an equivalent to "above the States". It would be easy to object that the word "nation" stands for an ethnic entity, composed of individuals, and not a legal body; if this were accepted it could be argued that an organization "above the nations" must be capable of exercising its authority directly on the citizens, regardless of their respective governments. By these means the essential point would be considered to be the existence of a power from which rules flow applicable to individuals without the intervention of the national legislatures.

However, it seems that the very fact that it is possible to make different deductions from the term "supranational" shows that etymological analysis is a fruitless exercise. As we have seen, the origin of the term was political. The objective characteristics of the institution for which the term was originally adopted certainly contribute to clarifying its legal scope, but it would be wrong to expect semantic arguments to be of assistance when the distinction between the terms "State" and "nation" is far from being accurate in describing the field of relations between States.

7. Euratom and the EEC

It is a matter of controversy whether Euratom and the EEC, which are based on treaties allotting to the governments of member States much greater powers than those conferred on them under the ECSC Treaty in the operation of the policies of the Communities, may still be termed "supranational", as may the ECSC. There are, however, several factors indicating that they are also supranational.

It cannot be doubted that in the two more recently created Communities the role of the organ composed of independent persons, corresponding to the original High Authority (that is to say, the Commission) is more limited. In the ECSC system the High Authority was endowed with the decision-making power, even though that power was required in many cases to be exercised only once the assent of the Council had been obtained, whilst in the EEC and Euratom it is usually the Council which adopts, on the proposal of the Commission, the binding decisions. Nevertheless, it would be simplistic, and fundamentally mistaken, to say that the element of the independence of the organ endowed with decision-making power has been reduced. In the two newer Communities there are also complex arrangements for taking decisions in which both the organ consisting of the representatives of the member States (the Council) and the two organs independent of the governments (the Commission and the Parliament) participate. Within the Council it is the majority voting rule which has to be applied, although for some years now little use has been made of it due to political reasons. Finally, a number of decisions whose importance is by no means minor are taken directly by the Commission (not to mention the particular powers of the European Parliament in budgetary matters. There are thus good reasons for holding that the decision-making machinery in the Communities has remained "independent" of the governments of the member States, not merely from a formal point of view but in substance.

The two other factors which appear necessary in order to classify an organization as supranational are also present in the EEC and Euratom, as in the ECSC. First, there is the direct relation between the organization and individuals, which is brought out both by the structure of the Community regulations which are to have direct effect within the member States, and by the right of individuals to institute proceedings before the

→ Court of Justice of the European Communities. Second, the existence of a legal order with its own court is a feature of all three Communities and it must indeed be recognized in particular that the rules concerning the EEC are of prime importance within the framework of that order. Accordingly, both the EEC and Euratom must be classified without reservation as supranational organizations.

8. Organizations of a Universal Nature

As far as organizations of a universal nature are concerned, the possibility of their being of a supranational nature must for the present be completely excluded. The → United Nations is designed to operate through inter-governmental relations, to act by means of recommendations or → declarations much more than by decisions; the direct contacts permitted between their organs and individuals, moreover, are merely marginal (for example, the individual communications they receive concerning violations of → human rights; → Human Rights, Activities of Universal Organizations). With regard to the UN Specialized Agencies, their prevailing characteristic, despite the variety of their structures and duties, is also the fact that they are instruments of intergovernmental cooperation. This influences their means of action, their system of decision-making and their contacts – generally indirect – with individuals. Furthermore, none of them is endowed with a legal order having its own court.

Certain doubts may arise concerning the proper classification of the → International Bank for Reconstruction and Development (IBRD), the → International Civil Aviation Organization (ICAO) and the → World Health Organization (WHO). With regard to the IBRD, the point of particular interest is its direct relations with private individuals which may arise in the field of financing (this applies even more so to the → International Finance Corporation). Such relations are, however, of a contractual nature even though the IBRD is the contracting party in a position of power (and consequently in fact "dictates" the terms). But to apply to a banking institution an attribute ("supranational") which was intended to designate an entity having partially sovereign functions would constitute an evident distortion of language. As to the ICAO, the relevant feature is that the Council is empowered to adopt "technical regulations" (recommended international standards and practices) which enter into force after a certain time unless the majority of member States disapproves. Such technical regulations are addressed to the subjects of municipal law, and certain writers have accordingly considered that they constitute the expression of a legislative power exercised by an international body having direct effects upon individuals. This view has, however, been criticized, and, in particular, it is pointed out that every member State retains the right to block such effects or to give priority to its own legislation; in any event, no one has gone so far as to suggest that the technical regulations constitute an actual legal system distinct from the municipal systems. Finally, with regard to the WHO, its constitution confers upon it power to issue regulations aiming at the prevention of diseases, standards concerning diagnostic methods and rules concerning the purity and activity of biological and pharmaceutical products. However, the fact that every member State is able, through objections or reservations, to prevent the entry into force of a regulation in its country shows clearly that the basis of the binding effect of such measures is agreement; moreover, it does not appear that there are any grounds for holding that the regulations produce direct effects on individuals without the need for implementing measures by the States (→ International Law and Municipal Law).

A new kind of supranational organization may be created if the new Convention on the Law of the Sea produced by the Third UN Conference enters into force (→ Conferences on the Law of the Sea). In fact, the International Sea-Bed Authority (→ Sea-Bed and Subsoil) provided for in the Convention would be entrusted with the supervision and administration of the resources of the "Area" constituted by the sea-bed and its subsoil beyond the limits of national jurisdiction (→ International Sea-Bed Area). It is a feature of such supervision and control that the interference of individual States is excluded, and the Authority is empowered to create limits to and conditions for the operations of individuals (partly by means of agreements and partly through regulations). The Authority would act chiefly through organs composed of governments (the Assembly and the

Council), but they would be required to operate in accordance with the majority voting principle and would work together with organs composed of independent persons (the Secretariat, the Enterprise and a Tribunal; → Law of the Sea, Settlement of Disputes).

Although it is too early to seek to determine the classification of an entity which is not yet operational – particularly since the final features of the International Sea-Bed Authority constitute one of the points of the draft convention which remain in controversy – there is no doubt that by reason of its functions and structure, an organization which is capable of the independent administration of a zone defined as "the common heritage of mankind" appears closer than any other existing universal organization to the "model" of a supranational organization described here. In this connection, it is worth recalling that some writers have emphasized the possibility of placing into that category previous cases involving → international régimes over territories in so far as they implied the exercise of sovereign powers by an international authority not subject to one or more specified States. The resemblances between such previous arrangements for the international administration of territories and the system of supervision of the new "Area" laid down in the Law of the Sea Convention are plain; notwithstanding some notable differences, the two kinds of organization seem to share a supranational nature.

9. Organs of International Organizations

As noted earlier, organs of international organizations have sometimes been considered as having a supranational nature without the organization as a whole becoming "supranational". Even this more restricted use of the term "supranational" is possible, provided that its meaning is clearly delimited. If an organ is to be described as supranational, its structure must ensure the presence of two characteristics: its actual independence and its power to adopt decisions addressed to individuals. If these two characteristics are established, it is possible to classify as a supranational body an international fluvial commission which is not composed of delegates of governments (or at least which is able to take majority decisions) and which enacts measures binding on the users of the river. The same classification is, it seems, appropriate to a quasi-judicial body to which individuals have direct access – the → European Commission of Human Rights – even though its decisions, when they are in favour of the applicants, cannot be said formally to be addressed to them. On the other hand, any organ whatever which simply has power to adopt majority decisions binding on States should not be described as supranational in view of the absence of a direct contact with individuals.

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TECHNICAL COOPERATION PROGRAMMES OF INTERNATIONAL ORGANIZATIONS *see* International Trade Centre UNCTAD/GATT; Organisation for

Economic Co-operation and Development; OPEC Fund for Economic Development; United Nations Conference on Trade and Development; United Nations Development Programme; United Nations Institute for Training and Research

TRAFFIC AND TRANSPORT, INTERNATIONAL REGULATION

1. Definitions

Traffic is the passage to and fro, the coming and going, of pedestrians or vehicles by road, by railway or by air, and the movement of vessels between → ports. Transport is the transfer of goods or passengers from one place to another. Traffic and transport and their related problems are closely linked, and any division should, therefore, be treated with some reserve.

2. Regulation of Traffic

The growing intercourse between nations has meant increased traffic and crossing of State frontiers. With the growth of politically independent sovereign → States the need to provide for some form of international regulation arose early on. The rise of free trade in the 19th century called especially for freedom of communications and commerce between nations (→ Communication and Information, Freedom of). International regulation did not, however, evolve as a uniform body of laws, but rather was built up successively and independently for each mode of transport and communication according to the specific geographical, economic and technical requirements. Art. 23, para. (e) of the Covenant of the → League of Nations bound the members of the League to "make provision to secure and maintain freedom of communications and of transit". An attempt was made in 1921 by the General Conference on Freedom of Communications and Transit in Barcelona to reach a global solution (→ Barcelona Conference (1921)). The 1921 Barcelona Convention still remains in force, but it has failed to have any great practical significance. The provisions of the 1975 Final Act of the → Helsinki Conference on Security and Cooperation in Europe regarding the development of transport are merely declarations of intent and not binding.

Large-scale international traffic first developed at sea. Under → maritime law in the early 19th century, the principle of freedom of the → high seas prevailed against attempts to monopolize parts of the oceans. Nowadays, however, it would appear that the pendulum is swinging in the opposite direction. With slight modifications, freedom of navigation (→ Navigation, Freedom of) has been extended to → territorial waters, the major inter-oceanic → canals and the maritime → straits (→ Passage, Right of). But there is still no → general principle of law requiring States to open their ports to the flags of all nations.

Inland navigation was opened up to international traffic (→ Internal Waters, Navigation in) somewhat later than sea navigation. Arts. 108 to 117 of the Final Act of the → Vienna Congress of 1815 embodied a general regulation regarding navigation on rivers. Nevertheless, these were only guidelines for future agreements between riparian States. Similar agreements were subsequently concluded concerning a number of → international rivers.

The spread of technology during the 19th century led to new forms of international cooperation in the fields of → telecommunications, → postal communications and → railway transport. The regulation of these activities was achieved mainly through multilateral international conferences. From the permanent bureaux of these conferences arose the first public international unions: the International Telegraphic Union, 1865 (→ International Telecommunication Union); the → Universal Postal Union, 1874; and the Central Office for International Railway Transport, 1890. Collective action was assisted by the fact that these matters were generally considered as non-political.

Towards the beginning of the 20th century, international → air law began to develop. After World War I, the Allied and Associated Powers agreed on the 1919 Paris Convention relating to the Regulation of Aerial Navigation, which was based on the principle that every State has complete and exclusive → sovereignty over the air space above its territory (→ Air, Sovereignty over the). This principle was reaffirmed in identical terms by Art. 1 of the → Chicago Convention of 1944. This Convention was complemented by a

series of bilateral → air transport agreements and international regulations covering → aircraft operations and → airports.

The use of paths and roads on foreign territory by pedestrians requires no special international regulation, as this right derives from the permission given to that person to stay in the territory. The admission of foreign motor vehicles, on the other hand, does require international agreement. The first convention on motor vehicle traffic was signed in Paris in 1909. The United Nations Convention on Road Traffic and the United Nations Convention on Road Signs and Signals, both signed on November 8, 1968 in Vienna, replaced earlier conventions of 1949 and are both now in force. These two Conventions apply on a world-wide basis.

Geographical and political considerations led to particularly close cooperation in many areas of road traffic and road construction in Europe. On other continents, various international institutions have been created especially to promote development of an infrastructure for road traffic, e.g. the Pan American Highway Congresses, the Asian Highway Coordination Committee, and the Trans-African Highway Coordination Committee.

New problems have arisen with the introduction of modern transport techniques such as → pipelines, hovercraft and multi-modal transport. But measures are also being developed to deal with these problems. In 1972, for example, the International Convention for Safe Containers was signed in Geneva.

International traffic calls for cooperation in many other fields of legal control, such as → customs law, → boundary traffic, and that connected with → railway stations on foreign territory. → Commercial treaties regulate the problem from the viewpoint of non-discrimination and equal access to transport markets. In wording almost identical to that of Art. 33 of the → Havana Charter, Art. V of the → General Agreement on Tariffs and Trade (1947) stipulates freedom of transit for goods (including baggage), vessels and other means of transport, with the exception of aircraft. However, it does not apply to the transport of passengers. In addition, the Convention on Transit Trade of Land-locked Countries was signed on July 8, 1965 in New York (→ Land-Locked and Geographically Disadvantaged States).

Special provisions are to be found in the law of the → European Economic Community (EEC), whose aims include the inauguration of a common transport policy. Title IV of the Community's Constituent Treaty deals with transport. According to Art. 84 (1), these provisions apply to transport by rail, road and inland waterway. Nevertheless, the EEC Council may decide whether, to what extent and by what procedure appropriate provisions might be adopted for sea and air transport. The applicability of the general principles of the Treaty of Rome to transport is still controversial. Art. 70 of the Constituent Treaty of the → European Coal and Steel Community provides for specific rules concerning rates and conditions of carriage and their publication.

The importance of traffic and transport problems has led to the setting up of special committees within the framework of the → United Nations. The activities of the Inland Transport Committee of the → United Nations Economic Commission for Europe, which have resulted in numerous international conventions, deserve particular mention. Another important permanent institution is the → European Conference of Ministers of Transport.

3. Regulation of Transport

The contract of carriage, which is concluded between the sender and the carrier, is made in favour of a third party, the consignee. At a very early stage, the special nature of this contract called for a standardization of international transport law (→ Unification and Harmonization of Laws). As a general rule, the existing international conventions lay down a unified law for the contract of carriage by one particular mode of transport arrangements only. The most detailed international regulations are for carriage by rail. The 1924 Brussels Convention on Bills of Lading applies to international transport by sea, the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) to road transport, and the 1929 → Warsaw Convention on International Air Transport to transport by air.

The 1978 Hamburg Rules on the Carriage of Goods by Sea, the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, the 1967 Geneva Convention on the Contract for the International Carriage of Pas-

sengers and Luggage by Inland Waterway (CVN), the 1974 Geneva Convention on the Contract for the Carriage of Passengers and Luggage by Road (CVR) and the United Nations Convention on International Multimodal Transport of Goods, signed in Geneva on May 24, 1980, all had not as of 1981 entered into force.

The conventions on the contract for international carriage have many features in common. They are primarily concerned with certain aspects of private law and proëedure such as the making of the contract on carriage, the transport document, the carrier's liability for loss of or damage to the goods and their delay in delivery, the right to sue and to be sued, and jurisdiction (→ Private International Law). Nearly all these conventions provide for the carrier's strict liability, limited by a ceiling amount. Nevertheless, the unified law varies to some extent from one mode of transport to the other. In spite of continual efforts, standardization of substantive regulations has so far proved impossible. This lack of success is ascribable to the different technological, economic and organizational requirements of the various modes of transport.

Deserving of particular attention are the very detailed international regulations for the transport of dangerous goods. The International Regulations concerning the Carriage of Dangerous Goods by Rail (RID) of 1970 and the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) of 1967 place obligations upon signatory States to implement their provisions. In contrast, the International Maritime Dangerous Goods Code of the Inter-Governmental Maritime Consultative Organization (now the → International Maritime Organization (IMO)) and the Restricted Articles Regulations of the → International Air Transport Association (IATA) are legally only recommendations, but in practice they are considered as binding (→ International Legislation). The UN Recommendations for the Transport of Dangerous Goods constitute a world-wide framework designed to facilitate harmonization of the aforementioned international instruments.

Over and above the various international governmental bodies such as the → International Civil Aviation Organization (ICAO), IMO, and the International Railway Office, a large number of international → non-governmental organizations, for example, the International Railroad Union (UIC), International Road Transport Union (IRU), IATA, International Federation of Tradeforwarders Associations (FIATA), and → International Chamber of Commerce (ICC), play an important role in international transport.

4. Conclusion

In spite of the abundance of multilateral and bilateral treaties and organizations in the field, traffic and transport law is not a clearly defined or well-established branch of international law. More than ever before, attempts today to promote economic development through freedom of traffic and transport conflict with concerns to protect the legitimate interests of economically weaker countries (→ International Economic Order). The principle of exclusive → territorial sovereignty still predominates. There is no general rule under international law which obliges States to guarantee and maintain freedom of traffic and transit. To a certain extent, a uniform law of contract exists for international carriage. In view of the conflicting interests of the parties concerned, it is open to doubt whether all the recently signed conventions in this field will eventually be effectively applied in a sufficient number of States.

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GERFRIED MUTZ

TREATIES BETWEEN INTERNATIONAL ORGANIZATIONS AND PRIVATE LAW PERSONS *see* Contracts between International Organizations and Private Law Persons

TREATY-MAKING POWER OF INTERNATIONAL ORGANIZATIONS *see* International Organizations, Treaty-Making Power

TRUST TERRITORIES *see* United Nations Trusteeship System

UNCTAD *see* United Nations Conference on Trade and Development; International Trade Centre UNCTAD/GATT

UNITED NATIONS

A. Origins. – B. Structure. – C. Development of the UN: 1. Growth of Membership. 2. Impact of World Politics. 3. Charter Amendments and Proposals for Reform. – D. Main UN Activities: 1. Maintenance of International Peace and Security. 2. General Political Activities. 3. Economic and Social Questions. 4. Human Rights. 5. Decolonization. 6. Development of International Law and Codification. – E. Legal Status of the UN: 1. International Legal Personality. 2. Legal Status in Municipal Law. 3. Privileges and Immunities. 4. Status of UN Headquarters. – F. Financing and Budget. – G. Special Legal Problems: 1. Binding Nature of UN Decisions. 2. Legality of UN Acts. 3. UN Acts in Municipal Law. 4. Withdrawal from the UN. 5. Suspension; Expulsion. – H. General Evaluation.

A. Origins

When the → United Nations Charter was adopted in San Francisco on June 26, 1945, World War II had ended on the European continent but still continued in the Pacific. The decision to establish an organization embracing all countries in the world to preserve the peace after the war had come to end goes back to the → Atlantic Charter of August 14, 1941, in which United States President Franklin D. Roosevelt and British Prime Minister Winston Churchill declared that "after the final destruction of Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries . . .". The two statesmen also expressed their desire "to bring about the fullest collaboration between all nations in the economic field, with the object of securing for all improved labour standards, economic advancement and social security". On New Year's Day 1942 the "Declaration by United Nations" was signed in Washington, D.C.; 26 governments subscribed to the common programme of purposes and principles embodied in the Atlantic Charter.

The first concrete steps towards the creation of the United Nations were taken during the late summer of 1944 at the → Dumbarton Oaks Conference, Washington, D.C. by representatives of the Soviet Union, the United Kingdom and the United States and, in a second phase, by those also of China. The four Powers reached a number of agreements – which came to be known as the Dumbarton Oaks proposals – on the purposes and principles of the organization, its membership and principal organs. Although the permanent representation of the "Big Five" (including France) in the central organ for the preservation of the peace – the UN Security Council – was already agreed upon, the voting procedure to be used in it could not then be settled. This question was later discussed at the → Yalta Conference (1945), and the three participants, Churchill, Roosevelt and Stalin, accepted the voting formula which was later embodied in Art. 27 of the Charter. The invitation to the "Conference of United Nations" which met at San Francisco from April 25 to June 26, 1945 for the preparation of the Charter was sponsored by the United States, the United Kingdom, the Soviet Union and China (France having decided not to act as a sponsoring nation). The Conference adopted the UN Charter, which entered into force on October 24, 1945. There were 51 original members of the organization. Today (1982) the number of members is 157.

The organization of the UN was conceived as an answer to the failure of its predecessor, the → League of Nations. The important innovations of the UN were the complete outlawing of the → use of force between States except in → self-defence, and the system of → collective security with the Security Council having the competence to take action by military force.

B. Structure

According to Art. 7, the principal organs of the UN are: the → United Nations General Assembly, the → United Nations Security Council, the → United Nations Economic and Social Council, the Trusteeship Council (→ United Nations Trusteeship System), the → International Court of Justice (ICJ) and the Secretariat. The most important organs for realizing the principal function of the organization, i.e. to keep the peace, are the Security Council, the General Assembly and the → United Nations Secretary-General.

The Security Council has "primary responsibility for the maintenance of international peace and security" (Art. 24(1)) and is composed of the five permanent members (China, France, the Soviet Union, the United Kingdom, and the United States) and ten members elected for two years, having regard to equitable geographical distribution (Art. 23(1)). Every permanent member has the right of → veto in all decisions, with

the exception of procedural matters (Art. 27(3)). Whether a matter is procedural or not will be decided by a vote which is regarded as non-procedural because at that stage it will not have been clarified whether the matter at issue is procedural or not. This approach was laid down by a statement of the Four Sponsoring Powers at the San Francisco Conference and has not been challenged since. Despite the wording of Art. 27(3), abstention and even non-participation by permanent members has not in practice hindered the adoption of a decision. This interpretation of the Charter was confirmed by the ICJ in its 1971 Namibia Advisory Opinion (→ South West Africa/Namibia (Advisory Opinions and Judgments)).

In the General Assembly each member has one vote; decisions on important matters require a two-thirds majority (Art. 18, which includes a definition of "important matters"; → Voting Rules in International Conferences and Organizations). The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council.

According to the Charter, the General Assembly may consider the general principles of cooperation in the maintenance of international peace and security and discuss "any questions" relating thereto and make recommendations (Art. 11). The decisions to maintain or restore international peace and security are to be taken by the Security Council (Chapters VI and VII). According to Art. 12, the General Assembly may not make any recommendation while the Security Council is exercising its functions. In practice the Security Council has frequently been unable to reach a decision due to lack of unanimity among the permanent members. This situation led to the famous → Uniting for Peace Resolution adopted by the General Assembly on November 3, 1950 during the Korean war (→ Korea). The Resolution confirmed the power of the General Assembly to recommend action as soon as the Security Council fails to act and when this is required by any nine members (originally seven) of the Security Council. Although initially its legality was much disputed, the possibility of calling emergency sessions of the General Assembly has been used frequently even by those States who had originally objected to the Resolution.

The Secretary-General has only comparatively few functions under the Charter. But the other principal organs, especially the General Assembly and the Security Council, may entrust to him functions within the area of their competence (Art. 98). In practice, the Secretary-General has carried out the important role of mediator in many instances (→ Conciliation and Mediation).

ECOSOC is the nucleus for the many activities of the UN in the fields of economic, social, cultural, educational, health (→ Public Health, International Cooperation), and related matters, many of which are the final responsibility of the General Assembly. Its activities in the field of → human rights have also been important and led to the adoption of the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights in 1966 (both in force since 1976; → Human Rights Covenants). ECOSOC is composed of 27 members elected by the General Assembly.

The UN Trusteeship System described in Chap. XII and, in practice even more important, the Declaration regarding → Non-Self-Governing Territories (Chap. XI) have been the basis of a supervised and regulated process of → decolonization unprecedented in history which has more than doubled the number of independent → States in the world.

The ICJ is an independent judicial organ, based on its Statute which forms an annex to the Charter, and is thus "the principal judicial organ of the United Nations" (Art. 92). Of primary importance for the role of the Court within the structure of the Organization is the power of the General Assembly and the Security Council to request an → advisory opinion on any legal question under Art. 96. This provision may be extended by a resolution of the General Assembly to other organs and → United Nations Specialized Agencies, as has happened on several occasions.

C. Development of the UN

1. Growth of Membership

From the original 51 members, the UN had grown to 157 by June 1982. Most of the new members are former → colonies which gained their independence after 1945. Several very small States with a population of far below one million, sometimes even below 100000, have been ad-

mitted, although there had been discussions until 1971 over whether → micro-States should be allowed to become members. Only a few very small States preferred not to apply for membership, e.g. Nauru and the Cook Islands. Of the States divided after World War II, the two German States, the Federal Republic of Germany and the German Democratic Republic, were admitted in 1973 (→ Germany, Legal Status after World War II), and the reunited → Vietnam in 1977. The seat of → China in the UN organs was taken by the representatives of the People's Republic of China under Resolution 2758 (XXVI) of October 25, 1971. The two Korean States have not become UN members. Switzerland has thus far not sought membership on the grounds of her → permanent neutrality. However, in 1981 the Swiss Federal Council informed the competent organs and the population that a referendum on the issue was to be held in the near future. North Korea, South Korea, → Taiwan and Switzerland are the only countries with a population of more than one million which are not represented in the UN. Of the smaller non-members → Liechtenstein, → Monaco and → Andorra may be mentioned.

2. Impact of World Politics

The deterioration of East–West relations after 1948, commonly called the period of the cold war, has had a considerable influence on the UN. The veto power was used frequently by the Soviet Union, and the Security Council could not fulfil its primary task. Thus, open hostilities in Korea, Vietnam and the Middle East could not be prevented by the UN. The → United Nations Peacekeeping System developed in a direction not foreseen by the Charter. While military → sanctions were used in one extraordinary case only in connection with Southern Rhodesia (SC Res. 221 (1966); → Rhodesia/Zimbabwe), → United Nations Forces were several times used fairly successfully with the → consensus of all concerned. Economic sanctions under Chap. VII were applied against South Africa and Southern Rhodesia but not where → armed conflicts had broken out. With the changing composition of the organs, especially the General Assembly, the East–West division became less important. A group of newly independent and mainly → developing States, the Group of 77 (now comprising about 110 members), is able to muster a two-thirds majority for most issues. (For the origins of this group see → United Nations Conference on Trade and Development.) With the period of *détente* after 1970 it seemed that the UN could indeed become an important centre for international cooperation. However, the fact that many vital issues between the superpowers or the military → alliances are dealt with outside the Organization has had a limiting effect on its possibilities. In recent years the problems created by the extreme differences between the industrialized North and the developing South have found their expression in the UN (→ International Economic Order).

3. Charter Amendments and Proposals for Reform

The only amendments to the UN Charter which have been adopted since the Organization came into existence concerned the enlargement of the Security Council and ECOSOC as well as the consequences of this enlargement for the voting procedure in the Security Council (→ Treaties, Revision). For several years now discussions have been held in the "Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" with a view to amend the Charter. Proposals exist to add the definition of → aggression (Res. 3314 (XXIX)) to the Charter and to introduce specific provisions which cover the practice of peacekeeping. Up until now, no agreement has been reached on these matters (see Report of the Committee, UN Doc. A/36/33).

D. Main UN Activities

1. Maintenance of International Peace and Security

The Charter outlaws the use of force except in self-defence. The question as to what extent Arts. 2(4) and 51 of the Charter may still allow for the use of armed force in extreme cases of → humanitarian intervention or for other purposes without an "armed attack" having occurred has not been settled with any finality. All matters related to international peace and security may be discussed by the Security Council and the General Assembly, and the Security Council may take enforcement measures against the aggressor

under Chap. VII. However, in practice, decisions based on Chap. VII have been extremely rare and were mainly directed against South Africa and Rhodesia. Of great importance is the peacekeeping system which has developed without a clear basis in the Charter and which consists mainly in the use of peacekeeping forces. Recommendations by the Security Council and, sometimes, the General Assembly, together with the agreement of the States furnishing troops and any States on whose territory they are to be stationed are the legal background to these measures. It is doubtful how far the Security Council may take binding decisions under Art. 25 (see section 6(a) *infra*).

2. *General Political Activities*

Since the General Assembly has a wide mandate to discuss all matters related to peace and security, → disarmament and political cooperation (Arts. 11 and 13), there are hardly any matters of international concern which have not been at issue in the debates of the General Assembly. The problems of disarmament have been discussed repeatedly at special sessions of the General Assembly. Many important treaties have been adopted as a consequence of discussions in the General Assembly. The UN → Conference on the Law of the Sea, the most important example of an effort to regulate a matter of grave concern to the international community by consensus, was instituted by the General Assembly.

3. *Economic and Social Questions*

Art. 55 lays down the principle according to which it is the task of the UN to promote higher standards of living, full employment, and conditions of economic and social progress and development. This article has been the basis of numerous activities, *inter alia* the creation of UN Specialized Agencies, conferences and organizations. The international economic order has been and remains on the agenda of the General Assembly during most sessions. In recent years the problem of overcoming the economic North–South divide in the world has been studied continuously in the Organization.

4. *Human Rights*

It was the experience with National Socialism and World War II which led to the inclusion of Art. 55(c) in the Charter, according to which the UN shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (→ Discrimination against Individuals and Groups; → Racial and Religious Discrimination; → Sex Discrimination). The Universal Declaration of Human Rights adopted by the General Assembly in 1948 (→ Human Rights, Universal Declaration (1948)) was the first step towards the implementation of this task. The Human Rights Covenants signed in 1966 and entering into force in 1976 have carried the protection of human rights and fundamental freedoms via UN organs further. The United Nations Human Rights Commission, a sub-commission of ECOSOC, discusses and sometimes investigates alleged violations of human rights. From the beginning the decision to mention the promotion of human rights as one of the tasks of the Organization precluded their being regarded as "essentially within the domestic jurisdiction of any state" in the sense of Art. 2(7) of the Charter (→ Domestic Jurisdiction).

5. *Decolonization*

The process of decolonization brought about under the supervision of the UN has been one of the most successful activities of the Organization. The UN Trusteeship System was based on the objective of reaching independence for the territories concerned, at least as one alternative (Art. 76(b)). But under Chap. XI the principle of → self-determination was also recognized for all non-self-governing territories, a principle that was further emphasized in the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted on December 14, 1960 by the General Assembly (Res. 1514 (XV)). By 1980, most colonial territories had reached independence and had become sovereign members of the UN.

6. *Development of International Law and Codification*

The era since the foundation of the UN has been of great importance for the development of

→ international law. The → codification of international law through multilateral treaties has made unprecedented progress. In other areas new problems have been regulated by treaties. The UN has acted as a central agency for this development. The General Assembly established the → International Law Commission as early as 1947, and this organ has drafted such important codification treaties as the → Vienna Convention on Diplomatic Relations (1961), the → Vienna Convention on Consular Relations (1963) and the → Vienna Convention on the Law of Treaties (1969). Other draft treaties were prepared by committees of the General Assembly or specific drafting conferences. The development of the law of the sea was brought about by several conferences on the law of the sea initiated by the General Assembly. Resolutions and → declarations adopted by the General Assembly have also contributed to the clarification and development of international law (→ International Organizations, Resolutions). A good example is the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (Res. 2625 (XXV); → Friendly Relations Resolution). Although the General Assembly has of course no competence to create new law, these resolutions may indicate how member States see the legal obligations under general international law and may show the existence or non-existence of consensus over important legal developments. Resolutions and declarations have been quoted by the ICJ and are used in legal arguments between States, showing that they play an important role in the development of present-day public international law.

E. Legal Status of the UN

1. International Legal Personality

The Charter does not expressly regulate the international legal personality of the Organization. It is clear, however, that the UN is seen as a → subject of international law where the conclusion of international agreements is expressly provided for (e.g. in Art. 43). The ICJ has recognized that the UN is in possession "of a large measure of international personality and the capacity to operate upon an international plane" (→ Reparation for Injuries Suffered in Service of UN (Advisory Opinion), ICJ Reports (1949) p. 174 at p. 179). In fact, the UN has concluded a considerable number of international agreements, such as Headquarters Agreements for the UN seats in New York and Geneva, agreements concerning peacekeeping operations, agreements concerning specific meetings or conferences organized by the UN, and agreements related to the privileges and immunities enjoyed by the UN on the basis of the Convention on the Privileges and Immunities of the United Nations of 1946 (→ International Organizations, Headquarters; → International Organizations, Privileges and Immunities). Also, the UN has acted on the international plane by demanding reparation for injuries suffered by its representatives and by accepting responsibility for damages caused by the Organization, especially in the course of peacekeeping operations (→ International Organizations, Responsibility). Thus, the UN enjoys a far-reaching international legal personality.

2. Legal Status in Municipal Law

According to Art. 104 of the Charter, the Organization is to "enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". The Convention on the Privileges and Immunities of the United Nations of 1946 provides in Art. I, Section 1: "The United Nations shall possess juridical personality. It shall have the capacity: (a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to institute legal proceedings." This Convention is in force for most member States of the UN and clarifies the position of the Organization under Art. 104.

3. Privileges and Immunities

Art. 105 of the Charter provides that the UN and its officials as well as the representatives of members shall enjoy privileges and immunities. Under Art. 105(3) the General Assembly has the right to propose conventions to specify the details of these rights. In accordance with this provision, the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on February 13, 1946 (Res. 22(I)), grants full immunity to the Organization, the

representatives of the members and the officials, except where it has been waived (→ Waiver).

4. Status of UN Headquarters

The legal status of the seat of the UN in the City of New York was regulated by the Headquarters Agreement between the United States and the UN, signed on June 26, 1947 (UNTS, Vol. 11, p. 11). The headquarters district is put "under the control and authority of the United Nations as provided in this agreement" (Art. III, Section 7). Although United States federal, state and local law remains applicable in the district, it may be superseded by UN regulations. The headquarters district is to be inviolable. United States officers and officials may not enter the district to perform official functions except with the consent of the Secretary-General. Transit to and from the headquarters district is guaranteed by the agreement. Police protection for the headquarters district is also regulated in the agreement. Similar agreements were concluded between the UN and Switzerland relating to the "Ariana Site" in Geneva, on the basis of which the UN premises in Geneva are inviolable and immune from search or other interference.

F. Financing and Budget

Under Art. 17, the General Assembly is to consider and approve the budget of the Organization and apportion the expenses between the members. The biennial budget is initially submitted by the Secretary-General and reviewed by a 16-member expert Advisory Committee on Administrative and Budgetary Questions which recommends modifications to the General Assembly. Contributions of members constitute the main source of funds for the regular budget. How much a State pays is determined primarily by its total national income in relation to that of other member States. For 1980 through 1982, 89 States were assessed between 0.01 and 0.03 per cent of the budget. Eighteen countries contribute more than one per cent: the United States 25 per cent, the Soviet Union 11.1 per cent, Japan 9.58 per cent, the Federal Republic of Germany 8.31 per cent, France 6.26 per cent, the United Kingdom 4.46 per cent, Italy 3.45 per cent, Canada 3.28 per cent, and the rest less than 2 per cent. The total regular budget for 1978–1979 was $1 090 113 500. (As to consequences of non-payment see section G.5 *infra.*) The regular budget covers administrative and other expenses of the central Secretariat and the other principal organs of the UN. Many other activities are financed mainly by voluntary contributions made outside the regular budget, such as those made to the → United Nations Development Programme, and the → World Food Programme.

G. Special Legal Problems

1. Binding Nature of UN Decisions

Art. 25 obliges all UN members "to accept and carry out the decisions of the Security Council in accordance with the present Charter". It is clear that this obligation exists primarily for decisions taken under Chap. VII. However, in practice those decisions are very rare. The ICJ has clearly rejected the view that Art. 25 applies only in relation to Chap. VII. Rather, the Court is of the opinion that the language of a resolution should be carefully analyzed before a conclusion can be made as to its binding effect. The Court even speaks of "the powers under Art. 25" (South West Africa/Namibia (Advisory Opinion), ICJ Reports (1971) p. 16 at p. 53). It is very doubtful whether this position can be upheld. As Sir Gerald Fitzmaurice has pointed out in his dissenting opinion: "If, under the relevant chapter or article of the Charter, the decision is *not* binding, Article 25 cannot make it so. If the effect of that Article were automatically to make *all* decisions of the Security Council binding, then the words 'in accordance with the present Charter' would be quite superfluous" (ibid., p. 293). In practice, the Security Council does not seem to act on the understanding that its decisions outside Chap. VII are automatically binding on the States concerned; indeed, the wording of Chap. VI shows that, here, non-binding recommendations are to be applied.

As for the General Assembly, Arts. 10 to 14 are the basis for the making of recommendations which are not binding, although the States concerned are under an obligation to consider their content. The ICJ has stated, however, that "it would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from

adopting, in specific cases within the framework of its competence, resolutions which make determinations or have operative design" (ibid., p. 50). Again, it is not quite clear under which circumstances this rule would apply except in cases where internal matters of the UN are at issue (→ International Organizations, Internal Law and Rules).

2. *Legality of UN Acts*

As the ICJ has pointed out, there is no procedure for determining the validity of acts of the UN. Therefore, "each organ must, in the first place, determine its own jurisdiction" (→ Certain Expenses of the United Nations (Advisory Opinion), ICJ Reports (1962) p. 151 at p. 168). The Court has also stated that "[a] resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ's rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted" (South West Africa/Namibia (Advisory Opinion), ICJ Reports (1971) p. 16 at p. 22). In the advisory opinion concerning Certain Expenses of the United Nations, the Court hinted at the possibility that the violation of internal provisions may not make the act itself illegal if it is within the functions of the Organization. A presumption is seen to exist for actions appropriate for the fulfilment of one of the stated purposes of the UN not being *ultra vires* (ICJ Reports (1962) p. 168). Where no possibility exists to settle by judicial procedure a dispute as to the lawfulness of any act of an international organization, the danger is always present that the States concerned may take the law into their own hands. This is what happened when the Soviet Union and France refused to pay their share of the budget for peacekeeping operations because they considered these acts to be illegal under the Charter (→ International Organization, Financing and Budgeting). The advisory opinion of the ICJ which was requested in this case was not binding and was, in fact, not accepted by the two States. Unless a compromise is found, a dispute as to the legality of UN acts may well lead to the non-recognition of the acts by the States concerned. For the financing of peacekeeping operations, compromises were in fact found. It is a considerable weakness of the UN system that, unlike in the → European Economic Community, no procedure for a binding settlement of disputes as to the legality of UN acts exists.

3. *UN Acts in Municipal Law*

Decisions of the UN are directed towards the member States, if they do not concern internal matters of the Organization, where they may be addressed to another organ. Even where direct obligations are created for the State by the decision, it is up to its internal law to determine whether State organs can comply with it (→ International Law in Municipal Law: Law and Decisions of International Organizations and Courts). When the United States adopted legislation in violation of Security Council resolutions introducing a trade → embargo against Rhodesia, United States courts had to apply United States legislation (Diggs v. Schultz, 470 F. 2d 461 (Cir. 1972); ILM, Vol. 11 (1972) p. 1252). Resolutions by UN organs will not create individual rights (→ Individuals in International Law) enforceable before national courts (Diggs v. Dent, ILM, Vol. 14 (1975) p. 797). When the Postmaster-General of Australia interrupted the telephone connections of the Rhodesian Information Centre, the High Court of Australia held that resolutions of the Security Council are not part of the Law of the Commonwealth (Bradley v. The Commonwealth of Australia and Another (1973), 47 A.L.J.R., 504; UN Juridical Yearbook (1974) p. 208). In Attorney General v. Nissan the British House of Lords refused to accord the UN the position of a foreign State concerning acts relating to the seizure of a hotel on Cyprus ((1969) 1 All E.R. 629). There may be situations, however, where municipal courts have to respect the *erga omnes* objective effect of UN acts unless this entails their State becoming responsible under international law. This could be the consequence of Security Council resolutions declaring → annexations of territory to be "null and void" (cf. SC Res. 497 of December 17, 1981 declaring Israeli measures concerning the Golan to be "null and void"; → Conquest).

After the General Assembly had terminated the → mandate for Namibia, the ICJ found that this act had validity *erga omnes* and had to be respected by all States. The illegal presence of

South Africa in the territory should not be recognized, according to the ICJ. This applies also to the recognition of acts performed by the illegal administration, except for certain categories of acts, for instance, registration of births, deaths and marriages (South West Africa/Namibia (Advisory Opinion), ICJ Reports (1971) p. 16 at p. 56). This shows that UN acts may well have some influence on decisions of national courts.

4. Withdrawal from the UN

The Charter does not provide for the withdrawal of members from the Organization. This was a clear decision taken at San Francisco. At first there were even proposals to make participation "obligatory" but this was rejected. A declaration adopted by a committee during the drafting of the Charter shows that it was not considered to be the intention of the Organization to compel those members to continue their "co-operation in the Organization" who wish to withdraw for specific reasons (Documents of the United Nations Conference on International Organizations, Vol. 7 (1945) p. 273). When Indonesia informed the Secretary-General that she had decided "to withdraw from the United Nations" on January 20, 1965, the attention of the UN was drawn to that problem and the earnest hope was expressed that Indonesia would resume full cooperation in due sourse. On September 19, 1966 Indonesia informed the Secretary-General that she had "decided to resume full co-operation with the United Nations and to resume participation in its activities starting with the twenty-first session of the General Assembly". The President of the General Assembly then made a statement according to which Indonesia had not withdrawn from the UN but had only ceased to cooperate (Repertory of Practice of United Nations Organs, Supp. No. 3, Vol. 1 (1972) p. 189). Since the members of the UN have ratified the Charter, which does not provide for withdrawal, it can be argued that this possibility does not exist. It seems, however, that under "exceptional circumstances" States will recognize a withdrawal as justified.

5. Suspension; Expulsion

According to Art. 5 of the Charter, a member against which preventive or enforcement action has been taken may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The Security Council may restore these rights and privileges. Since, in practice, enforcement actions have not been taken except in rare cases (see section D.1. *supra*) this article has never been applied. The same is true for Art. 6, which gives the General Assembly, again upon the recommendation of the Security Council, the competence to expel a member which has "persistently violated the Principles contained in the present Charter". A very dubious practice has been developed in the General Assembly, however, where the credentials of the South African delegates have not been recognized since 1971 because of the lack of representativeness by the Government of South Africa of the majority of the South African people (→ Apartheid). In 1974 the South African delegates were excluded from the General Assembly, and South Africa has not participated in the work of the Assembly since then. The procedure applied here may well be called a circumvention of Arts. 5 and 6, which clearly regulate the matters of suspension and expulsion.

Problems have also arisen in connection with Art. 19, under which a State "shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years". When several countries had objected to peacekeeping operations as not being in conformity with the Charter and had not paid those parts of their contributions attributable to those operations, the applicability of Art. 19 had to be clarified. A compromise was reached to proceed by consensus without formal vote in the General Assembly, thereby avoiding the issue under Art. 19 (Repertory of Practice of United Nations Organs, Supp. No. 3, Vol. 1 (1972) pp. 396–399). A special procedure for the financing of peacekeeping forces was applied from then on.

H. General Evaluation

As a world-wide Organization with a mandate to concern itself with all the issues vital to the preservation of mankind and to the overcoming of the great dangers to peace threatening the globe,

the UN can achieve nothing without the support of its members. The Organization is a mirror of the conditions existing in the international society of States. With the veto power in the SECURITY Council the structure of the Organization takes account of the differences existing between States as far as their political importance is concerned. Where the permanent members of the Security Council are in agreement as to the method to solve a specific dangerous situation, the UN may serve as the institutional structure through which big-power influence may be exercised and may become more acceptable to smaller countries. Where there is a rift between the permanent members of the Security Council, whether or not the veto will be used will depend on the importance of the question. Even then the forum of discussion in the Security Council may not be without influence in the final resolution of the problem. In the General Assembly all important issues concerning international society can be addressed. A "parliamentary procedure" which the States of the world have to use to justify their general policy has been created.

The development of public international law can no longer be separated from the UN. The Organization has become the most important world-wide law-creating body. It is frequently stated that the possibilities for → peaceful change, mentioned in Art. 14 of the Charter, should be strengthened. The process of decolonization brought about within the UN framework is probably the best example of peaceful change in history.

The development of the UN since 1945 shows that it is very difficult to strengthen the institutional framework and the competences of the Organization. It is telling that the most successful model for peacekeeping has been created outside the literal text of the Charter without it thus far having been possible to incorporate this model into the Charter.

Compared with the difficult history of the League of Nations, which never became the recognized forum of all the States in the world, the development of the UN has been more successful. Its contribution to international law in the second half of the 20th century can be seen throughout this Encyclopedia.

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JOCHEN ABR. FROWEIN

UNITED NATIONS ADMINISTRATIVE TRIBUNAL

1. Background and Establishment

The United Nations Administrative Tribunal was created to adjudicate in legal disputes arising between the → United Nations Secretary-General and staff members of the → United Nations Organization (→ International Secretariat; → Civil Service, International).

Pursuant to a recommendation of the Preparatory Commission of the United Nations, the Secretary-General appointed a small Advisory Committee to draft, for submission to the → United Nations General Assembly, a statute for an administrative tribunal (→ Administrative Tribunals, Boards and Commissions in International Organizations). In its report, the Committee recalled the precedent of the Administrative Tribunal of the → League of Nations and noted that the protection of the staff members' contractual rights could not be ensured by national courts since the UN cannot be sued in such courts without its consent (→ International Organizations, Privileges and Immunities). During the second part of the first session of the General Assembly, the Committee's draft met with the opposition of the Soviet delegation, which regarded the institution of an administrative tribunal as useless, while the United States delegation expressed concern that such a tribunal would undermine the authority of the Secretary-General and the legislative powers of the General Assembly. A revised draft was adopted by the Assembly at its fourth session on December 9, 1949 (UN GA Res. 351 (IV)). The Statute came into force in January 1, 1950.

As to the Tribunal's character, the → International Court of Justice has recognized that the Tribunal "is established ... as an independent and truly judicial body pronouncing final judgements without appeal within the limited field of its functions" (→ Awards of Compensation Made by UN Administrative Tribunal, Advisory Opinion of July 13th, 1954, ICJ Reports 1954, p. 47, at p. 53). According to the Court, capacity to establish a tribunal to do justice between the Organization and the staff members "arises by necessary intendment out of the Charter" (ibid., at p. 57; → United Nations Charter; → International Organizations, Implied Powers).

Following judgments awarding compensation to American staff members dismissed after invoking the Fifth Amendment of the United States Constitution in national proceedings, the General Assembly amended the Statute to limit the amount of compensation which the Tribunal may award and to change the practical consequences of a Tribunal's decision rescinding an administrative decision (UN GA Res. 782 B (VIII) of December 9, 1953). The ICJ having declared that the General Assembly had "not the right on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal" (ICJ Reports 1954, p. 47, at p. 62), the Assembly introduced into the Tribunal's Statute

provisions for judicial review of Tribunal judgments (Res. 957(X) of November 8, 1955; → Judgments of International Courts and Tribunals).

In 1950 the Tribunal established its Rules in pursuance of Art. 6 of its Statute. They have been amended several times, most recently in 1972. All matters which are not expressly provided for in the Rules are dealt with by decision of the Tribunal upon the particular case (Rules, Art. 27: Judgment No. 237; sources for all cases referred to are contained in Judgments, *infra*).

2. *Composition*

The Tribunal is a permanent judicial body composed of seven members appointed for three years by the General Assembly upon nomination by member → governments. Under the Statute, they must be nationals of different → States, but there is no requirement as to their qualifications or their relationships with their own governments or with UN organs. In practice, geographical distribution is observed (→ International Organizations, General Aspects). Some countries, however, have always been represented (France, India, the United Kingdom, and the United States). Members of the Tribunal are usually jurists or diplomats who have a good knowledge of the UN system.

Stability in the composition of the Tribunal has been achieved through the process of reappointment. No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he or she is unsuited for further service.

The Tribunal elects from among its members a President and two Vice-Presidents; they preside in the Tribunal's three-member sittings. The President designates the three members of these panels and may, in addition, designate other members of the Tribunal to serve as alternates. In making these designations he keeps in mind the need to achieve uniformity in the case law while taking into account the particular features of each case, including the language to be used in the proceedings.

The Tribunal usually holds two sessions a year for the purpose of considering cases. A plenary session is held once a year for the purpose of election of officers and for resolution of any other matter affecting the administration or operation of the Tribunal.

In accordance with the Statute, the Secretary-General provides the Tribunal with an Executive Secretary and such staff as may be considered necessary. While for administrative purposes the Secretariat of the Tribunal is part of the General Assembly's Office of Legal Affairs, its staff members are responsible to the Tribunal which alone is in a position to evaluate their performance and to determine the qualifications required for the fulfilment of their duties.

3. *Competence*

Art. 2 of the Statute provides:

"1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance including the staff pension regulations.

2. The tribunal shall be open:

(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;

(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied."

Under Chapter XI of the Staff Regulations, all staff members governed by the Regulations or by similar provisions have access to the Tribunal (Judgments Nos. 57 and 70: Hilpern, Radicopoulos).

The Tribunal, which decides on its own competence, has declared itself competent to pass judgment on the basis of rules which it is called upon to apply, even if the applicant does not have the status of a staff member, particularly in cases where the UN had undertaken to employ a person even though the appointment has not taken effect (Judgment No. 106: Vasseur) or in the case of an Operational, Executive and Administrative Personnel (OPEX) officer in the service of a government (Judgment No. 150: Irani). The Tri-

bunal has even accepted that it may be seised, if agreed between the parties, on an application submitted by a person who had entered into a Special Service Agreement which provided that he or she would not be considered in any respect as being a staff member of the UN (Judgment No. 230: Teixeira) (→ Standing before International Courts and Tribunals).

Pursuant to Art. 14 of the Statute, the competence of the Tribunal has been extended to two → United Nations Specialized Agencies, the → International Civil Aviation Organization (ICAO) and the Intergovernmental Maritime Consultative Organization (now the → International Maritime Organization) under a special agreement made by the Secretary-General with these agencies. The UN Administrative Tribunal is also competent to pass judgment upon applications alleging non-observance of Staff Pension Regulations by the Joint Staff Pension Board or by the Staff Pension Committee of an organization, provided it has accepted the competence of the Tribunal in such cases (UN GA Res. 955 (X) of November 3, 1955), notwithstanding the competence of the → International Labour Organisation Administrative Tribunal in disputes concerning contracts of employment of staff members of organizations which have recognized the general competence of that Tribunal. Each tribunal has to decide on its own competence in a particular case (Judgments Nos. 118 and 119: Vermaat, West). The Rules of the UN Tribunal include provisions for intervention by persons to whom the Tribunal is open and whose rights may be affected by the judgment.

The administrative authorities over which the Tribunal has competence may also intervene if they consider that their respective administrations may be affected by the judgment to be given by the Tribunal.

The Tribunal may grant a hearing, for the purpose of information, to persons to whom the Tribunal is open and to duly authorized representatives of the staff association of the organization concerned. The Tribunal has even recognized the right of the United States Government to submit its views as *amicus curiae* on the ground that it might be affected by a decision in the case (Judgment No. 237: Powell).

In the exercise of its competence, the Tribunal must respect the authority of the Secretary-General: It is for the Secretary-General to evaluate the performance of a staff member (Judgment No. 267: Adler) and to impose disciplinary measures, subject to observance of the provisions regarding disciplinary proceedings.

The Tribunal has held, however, that it has competence to review a decision if it is based on a mistake of fact, is arbitrary, or is motivated by prejudice or by other extraneous considerations (Judgment No. 210: Reid). The Tribunal has the same competence in a case of termination of appointment in the interest of the Organization (Judgment No. 113: Coll) or in a case of termination of a probationary appointment (Judgment No. 138: Peynado).

When the Tribunal was created, it was emphasized that the Tribunal had to respect the right of the General Assembly to amend the Staff Regulations. The Tribunal thus held that it was not competent to rule on a proposal submitted in this connection by the Secretary-General to the General Assembly (Judgment No. 240: Newton). The Tribunal, however, has occasionally instead made observations on these matters which the competent authorities might regard as recommendations (Judgment No. 162: Mullan).

Staff Regulation 12(1) provides that the regulations may be amended by the General Assembly "without prejudice to the acquired rights of staff members". With regard to rules made by the Secretary-General, the Tribunal has held that "the complex of benefits and advantages to which a staff member is entitled for services rendered before the entry into force of a new rule cannot be impaired", and that the Secretary-General is bound to take the necessary steps to that effect (Judgment No. 266: Capio).

4. Procedure; Applicable Law; Decision; Review

An application is directed against an administrative decision. The Secretary-General and the applicant may agree to direct submission of an application to the Tribunal (Judgment No. 237: Powell), but as a general rule "[a]n application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its

opinion to the Secretary-General" (Art. 7 of the Statute).

It is the decision taken by the Secretary-General following the recommendation of the joint appeals body, or the decision implied in the Secretary-General's failure to take any action within 30 days following such recommendation, which may be contested before the Tribunal within a time-limit of 90 days. This time-limit may be extended by a decision of the Tribunal.

The proceedings are basically in writing (→ Procedure of International Courts and Tribunals). They consist of an application, an answer and any observations that may be made on the answer. The applicant may request oral proceedings. Such proceedings are held if the presiding member, having regard to the importance or complexity of the case or to the importance of oral testimony (→ Evidence before International Courts and Tribunals), so decides.

To help in preparation of the application, the applicant is entitled to consult his or her official status file, which is communicated to the Tribunal. The President may on his own initiative or at the request of either party call upon the parties to submit additional written statements or additional documents, or take oral statements in order to complete the documentation of the case.

The Tribunal may order production of additional evidence at any stage of the proceedings. The problem of the production of confidential documents has therefore arisen. Under the Rules, each additional document must be communicated to the other party, although the Tribunal may decide otherwise at the request of one of the parties and with the consent of the other parties. This has enabled the Tribunal to consider whether to make use of documents which the respondent regards as confidential and irrelevant.

The applicable law consists mainly of the internal law of the UN, namely, the applicant's contract of employment, the Staff Regulations and Rules, and provisions of general scope such as administrative instructions (→ International Organizations, Internal Law and Rules). The Tribunal has recognized that resolutions of the General Assembly (→ International Organizations, Resolutions) constitute, as far as the staff members to whom they apply are concerned, "conditions of employment" to be taken into account by the Tribunal (Judgment No. 249: Smith).

The UN Charter has been mentioned in some judgments (Judgment No. 162: Mullan), but has not, however, formed the immediate basis of those decisions.

The Tribunal applies unwritten rules derived from the → general principles of law in the fields of contract, procedural law and also of administrative law in such matters as judicial control over the exercise of discretionary powers (Judgment No. 18: Crawford), respect of the rights of the defence (Judgment No. 130: Zang-Atangana) and compensation for breach of contractual obligations or for injury sustained as a result of administrative errors (Judgment No. 266: Capio). The Tribunal has declined, however, to fill gaps in the internal law of the UN by applying the law of specific countries (Judgment No. 129: Gallianos).

A decision rendered by the Tribunal upon an application is called a "judgement" (Art. 10(2) of the Statute). Art. 9 of the Statute provides that "[i]f the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked" (→ International Organizations, Legal Remedies against Acts of Organs).

In a number of cases the Tribunal has found that implementation of the judgment through reinstatement or specific performance was not feasible and decided that it was appropriate to award compensation, the amount of which was fixed sometimes by analogy to some Staff Regulations (Judgment No. 132: Dale) or by direct assessment (Judgments Nos. 265 and 266: Kennedy, Capio). The Tribunal has also awarded compensation in cases of injury attributable to an error of the administration in question (Judgment No. 147: Thawani).

Under Art. 9 of the Statute, the Tribunal must fix the amount of compensation to be paid to the applicant should the Secretary-General decide to pay an indemnity to the applicant rather than reinstate him or her or require performance of the obligation invoked (e.g. Judgment No. 85: Carson). Thus, an option is open to the Secretary-General.

Compensation awarded by the Tribunal may not exceed the equivalent of two years' net base

salary of the applicant save in exceptional circumstances, in which case the Tribunal must state the reasons for its decision (Judgments Nos. 200 and 247: Dearing, Thawani).

Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case to be remanded for institution or correction of the required procedure. In such a case, the Tribunal may order the payment of compensation to the applicant not to exceed the equivalent of three months' salary. The Tribunal has often applied Art. 9(2) of the Statute which provides for this procedure and in general has not had to render a judgment on the merits (see Judgments Nos. 114 and 120: Khederian).

The Tribunal has awarded interest when long delay has been involved (Judgment No. 196: Back). The Tribunal only grants costs within the limits set forth in its statement of policy of December 18, 1950, namely, if such costs are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal.

Since the applicant may, at no charge, make use of the services of a member of a panel of counsel set up by the administration, the costs remain exceptional and minimal.

Applications for rescission *erga omnes* of provisions of the Statute were submitted to the Tribunal, which held (Judgment No. 237: Powell) that it was not competent in the matter and had to "render in each case a judgement taking into consideration the situation of each Applicant".

Under Art. 10(2) of the Statute, judgments are "final and without appeal". Any compensation awarded by the Tribunal must be paid by the UN or the Specialized Agency concerned.

A judgment may be contested, however. The Tribunal agreed to receive a request for interpretation on the basis of principles formulated by the ICJ (Judgment No. 87: Carson). Under Art. 12 of the Statute, clerical or arithmetical mistakes in judgments or errors arising from any accidental slip or omission may be corrected by the Tribunal. Under rather restrictive conditions, revision of a judgment may be requested on the basis of the discovery of a fact which was, when the judgment was given, unknown to the Tribunal and to the party claiming revision (→ Judicial and Arbitral Decisions: Validity and Nullity).

Finally, UN GA Resolution 957 (X) of November 8, 1955 introduced a procedure for review by the ICJ. The Secretary-General, the individual applicant or a member State may ask a special committee, the Committee on Applications for Review of Administrative Tribunal Judgements, to request an → advisory opinion of the ICJ. The Review Committee, which is composed of member States whose representatives have served on the General Committee of the most recent regular session of the General Assembly, ascertains whether there is a substantial basis for the application for review. If the Committee decides that such a basis exists, it seises the ICJ.

A judgment can only be reviewed if the Tribunal has exceeded or failed to exercise its jurisdiction, or has erred on a question of law relating to the provisions of the UN Charter, or has committed a fundamental error in procedure which has occasioned a failure of justice (Statute, Art. 11(1)). The views of the staff member concerned are transmitted to the ICJ by the Secretary-General.

The Secretary-General must either give effect to the opinion of the ICJ or request the Tribunal to convene specially in order to make necessary changes in its original judgment or to give a new judgment in conformity with the opinion of the ICJ (Art. 11(3)).

The Review Committee, which has frequently been seised by applicants, has only admitted two applications, one from an applicant and another from a member State. In the first of these proceedings, the ICJ upheld Judgment No. 158 (Fasla) (→ Judgment No. 158 of UN Administrative Tribunal, Application for Review of (Advisory Opinion) of July 12, 1973). The ICJ there emphasized that on the merits, it could not substitute its judgment for that of the Tribunal, and the Court defined its powers according to the provisions of the Tribunal's Statute. The Tribunal then "confirmed" Judgment No. 158 (Judgment No. 177 (Fasla)).

More recently, the Committee requested an ICJ advisory opinion on the basis of a member State's

request. In Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal (Advisory Opinion) of July 20, 1982, ICJ Reports (1982), the Court found that it had competence to render the requested advisory opinion and decided to comply with the request despite expressing its concern over irregularities in some of the procedures employed by the Committee. The Court raised the question of the composition of the Tribunal, which had included a non-permanent member who had delivered a dissenting opinion. However, this question was dismissed by the Court, considering that it was not called upon to pronounce on the procedural regularity of the Tribunal's sessions. The Court then upheld the Tribunal's Judgment No. 273 (Mortished), thereby rejecting the allegation that the Tribunal had denied full effect of a UN General Assembly resolution. Without judging whether the Tribunal's decision was correct on the merits, the ICJ ruled that the Tribunal had neither erred on a question of law relating to the provisions of the Charter or exceeded its jurisdiction or competence.

5. Brief Summary of Major Judicial Decisions

Many cases concern termination-of-employment decisions. The Tribunal has held that permanent appointments cannot be terminated except under Staff Regulations which enumerate precisely the reasons for and the conditions governing the termination of service (Judgment No. 29: Gordon).

Permanent appointments can be terminated on one of the grounds stated in Staff Regulation 9(1) (a) only upon a decision reached by means of a "complete, fair and reasonable procedure" which must be carried out prior to such decision (Judgments Nos. 83 and 157: Miss Y (medical reasons), Nelson (unsatisfactory service)). The Tribunal has examined the procedure carried out both by the Appointment and Promotion Board (Judgment No. 98: Gillman) and by the Joint Review Body instituted after the Nelson Judgement (Judgment No. 257: Rosbasch).

The conditions under which the person concerned must have access to the documents necessary for his or her defence in proceedings instituted against him or her are not specified in the Staff Rules. The Tribunal has held that the staff member concerned must have access to documents and information within the exclusive possession of the Administration in so far as it relates to him or her and is relevant to the proceedings under consideration. Unless the applicant is given access to "relevant" documents, there is a violation of the rights to a proper defence (Judgment No. 74: Bang-Jensen). A staff member against whom disciplinary proceedings are taken should likewise be furnished with a specific charge and should be accorded the right to be heard before a sanction is imposed on him or her (Judgments Nos. 123 and 183: Roy, Lindblad).

Various test cases have been brought before the Tribunal in such matters as the consequences for American staff members of non-ratification of the Convention on the Privileges and Immunities of the United Nations by the United States Government (Judgments Nos. 88 and 237: Davidson, Powell) or the right to withhold salary for unauthorized absence from work as part of a collective work stoppage (Judgment No. 249: Smith).

6. Evaluation

As of May 1982 the Tribunal had rendered 290 judgments. Any exceptional activity, such as the UN Operation in the Congo (→ United Nations Forces), has given rise to many cases. So also did the early lives of newly-created subsidiary organs (for instance, the → United Nations Industrial Development Organization (UNIDO)). But in recent years all test cases have dealt with staff members at the UN headquarters.

The judgments rendered in cases in 1953 regarding American staff members (see section 1 *supra*) raised difficulties which led to the adoption of amendments to the Statute of the Tribunal limiting its competence. What is criticized today is the power of the Secretary-General not to reinstate a staff member whose employment has been wrongfully terminated, as well as the impossibility for the staff association or other groups to place before the Tribunal problems concerning whole categories of staff members, in other words, the fact that the Tribunal has no part in the settlement of collective disputes.

The decision, taken on the basis of a report of the International Civil Service Commission, to

reduce by 17 per cent the salary scale applicable to General Service staff of the Geneva-based agencies led to contradictory positions being taken by two Administrative Tribunals of the UN system. The members of the ILO Administrative Tribunal gave an "opinion" according to which, under labour law but not under the law applicable to the contracts, the introduction of a new salary scale without prior negotiations with the Staff Council would be a violation of an agreement previously concluded with the Staff Council. The UN Administrative Tribunal was seised directly by a staff member and admitted applications for intervention by other staff members. It examined the legality of the salary decision on the basis of the Staff Regulations and Rules and considered whether there existed a legal obligation to hold collective negotiations. It came to the conclusion that the salary scale promulgated effective January 1, 1978 had not been vitiated.

In view of such a contradiction, the General Assembly requested the Administrative Committee for Co-ordination to study the feasibility of establishing a single Administrative Tribunal for the entire common system (UN GA Res. 33/119 of December 19, 1978). After a thorough examination of the question, the Secretary-General opted for "a purposeful harmonization and further development of the statutes, rules and practices of the existing Tribunals" (UN Doc. A/C.5/34/31). In 1979 the General Assembly recognized that this was the immediate objective that should be pursued (Res. 34/438 of December 17, 1979). The UN and the ILO Tribunals have decided to establish regular contacts in order to achieve as far as possible a progressive harmonization of their jurisprudence. (See also → World Bank Administrative Tribunal.)

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SUZANNE BASTID

UNITED NATIONS CHARTER

1. Historical Development

The Charter of the → United Nations, an international → treaty, was adopted by the United Nations Conference in San Francisco on June 25, 1945. It was signed by representatives of 50 States the following day. Under the terms of the Charter, entry into force required ratification by the five permanent members of the Security Council – China, France, the Soviet Union, the United Kingdom, and the United States – and by a majority of the other signatory States. This requirement was satisfied on October 24, 1945, the day the Soviet Union deposited its instrument of ratification. Since then, 107 other States have adhered to the Charter in conformity with Art. 4, thereby bringing the total number of members of the Organization to 157.

Much of the preparatory work in drafting the

Charter was carried out by a group in the State Department of the United States, headed by Leo Pasvolsky. Their work culminated in 1944 in a document entitled "Tentative Proposals for a General International Organization". The Proposals were submitted to the United Kingdom, China and the Soviet Union after those three States had replied favourably to a United States invitation to participate in informal conversations in order to coordinate the views of the → Great Powers on the international organization envisaged at the Moscow and Tehran Conferences (→ Tehran Conference (1943)).

Conversations between representatives of the Great Powers took place from August 21 to September 29, 1944, at Dumbarton Oaks, a private estate in Washington (→ Dumbarton Oaks Conference (1944)). Although the other powers also submitted proposals prior to the conversations, the United States proposals were accepted as the basis for discussion because they were the most fully developed of the four. Ultimately, the substance of the American proposals was also largely accepted by the other powers. These proposals contemplated a multi-purpose organization, but one whose primary purpose would be to maintain international peace and security (→ Peace, Means to Safeguard). Like the → League of Nations, the proposed organization would include two principal organs – a large one in which all States would be represented and a smaller one with a Great-Power nucleus. The Charter, however, would delineate more clearly than did the League Covenant the functions of these two organs, the → United Nations General Assembly, and the → United Nations Security Council.

A number of important questions were not resolved at Dumbarton Oaks. The most important of these concerned the voting procedure in the Security Council (→ Voting Rules in International Conferences and Organizations; → Weighted Voting; → Veto). That question was among those decided by Roosevelt, Churchill, and Stalin at the → Yalta Conference (1945) in the Crimea. At Yalta, the three leaders also decided to hold a general conference in San Francisco at which the 47 States that had declared → war on the Axis Powers and had adhered to the 1941 "Declaration by United Nations" would draft the Charter of the Organization.

Fifty States participated in the Conference (→ Congresses and Conferences, International) that convened at San Francisco on April 25, 1945. All of the adherents to the "Declaration by United Nations" were represented except Poland, the sponsoring governments being unable to agree on the Polish government to be recognized (→ Recognition). (Provision was made at the Conference for Poland to be considered an "original Member" once a Polish government acceptable to all the Yalta Powers had ratified the Charter.) In addition, the governments of four other States – Argentina, Denmark, the Byelorussian Soviet Socialist Republic, and the Ukrainian Soviet Socialist Republic (→ Soviet Republics in International Law) – were invited after the Conference had begun.

The invitation to the Conference specified that the Dumbarton Oaks Proposals were to be considered "as affording a basis" for the Charter. For inclusion in the Charter, any provision, even if proposed by the sponsoring governments, had to be adopted by two-thirds of the members of the conference present and voting. Numerous provisions as adopted differed from the Proposals. Perhaps the most significant deviation was the expansion of the General Assembly's powers of discussion – a change that was responsible for the evolution of the General Assembly into the most important forum for the expression of world opinion. Other Charter provisions – including the chapters on the → United Nations trusteeship system – had no counterpart in the Dumbarton Oaks Proposals. But in most other important respects, the Charter adopted by the Conference resembled the proposals of the sponsoring governments. Most significantly, the attempts to limit the veto power of the permanent members of the Security Council were unsuccessful.

2. Structure of the Charter

The Charter is composed of a → preamble, 111 articles, and the annexed Statute of the → International Court of Justice (ICJ). The articles are grouped into 19 chapters. The first chapter, as well as the preamble, expresses the broad purposes and principles of the Organization. Of the remaining chapters, some establish and describe the various organs of the UN – Chapter III (Organs), Chapter IV (General Assembly), Chap-

ter V (Security Council), Chapter X (Economic and Social Council), Chapter XIII (Trusteeship Council), Chapter XIV (International Court of Justice), and Chapter XV (Secretariat); some specify in greater detail the powers of the organs – Chapter VI (Pacific Settlement of Disputes), Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression); some express additional rights and obligations of members – Chapter VIII (Regional Arrangements; → Regional Arrangements and the UN Charter), Chapter IX (International Economic and Social Cooperation, including the setting up of the → United Nations Specialized Agencies system), Chapter XI (Declaration Regarding → Non-Self-Governing Territories), Chapter XII (International Trusteeship System), and Chapter XVII (Transitional Security Arrangements); and some deal more technically with the Organization – Chapter II (Membership) and parts of Chapter XVI (Miscellaneous Provisions) – or with the Charter itself – Chapter XVIII (Amendments), Chapter XIX (Ratification and Signature), and parts of Chapter XVI.

3. The Preamble

The preamble adopted at the San Francisco Conference was based largely on a draft proposed by Field Marshal Smuts of South Africa, who emphasized the desirability of setting forth the purposes of the UN and the "nobility of intention" of its founders "in language that should appeal to the heart as well as to the mind of men". The evocative introductory phrase, "We, the Peoples of the United Nations", was included at the suggestion of the United States delegation. (Since States, not "Peoples", become parties to treaties, a second sentence – reading in part, "Accordingly, our respective Governments... have agreed to the present Charter" – was later added to the preamble.)

As part of the Charter, the preamble has the same legal force as the rest of the Charter. However, it does not purport to impose obligations upon members. Its importance lies largely in its setting forth the context within which the Charter's other provisions must be read. It is thus an important tool for interpreting the rest of the Charter (→Interpretation in International Law).

The preamble's first section describes the factors impelling the drafters to form the Organization. The foremost among these was their determination "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...." That phrase sets forth the UN's principal *raison d'être* and at the same time places the Charter in its historical context. The drafters' humanitarian intentions were given prominence in the preamble (→ Human Rights). Increased awareness of the significance of "fundamental human rights" and of the "dignity and worth of the human person" was the product of the recent experiences with → genocide. The preamble contains the only reference in the Charter to the sanctity of treaties. Its inclusion in the preamble represented a compromise between those States desiring Charter affirmation of respect for treaty obligations and those States desiring to empower the Security Council to revise those treaties it considers inapplicable (→ Treaties, Revision). The reference in the preamble was not considered inconsistent with Art. 103, which provides that, in the event of a conflict, a member's obligations under the Charter shall prevail over its obligations under any other international agreement.

4. Purposes of the UN

The UN's primary purpose, as provided for in the first paragraph of Art. 1, is "to maintain international peace and security". For the achievement of this end, two subsidiary purposes are mentioned. The first contemplates the use of "effective collective measures" – the first reference in the Charter to the Organization's enforcement power (→ Collective Measures; → International Obligations, Means to Secure Performance). This power, which formed the backbone of the system of → collective security envisioned by the drafters, is described in greater detail in Chapter VII. The second subsidiary purpose is to bring about "the adjustment or settlement of international disputes or situations which might lead to a breach of the peace" (→ Peace, Threat to). The Organization's powers in this regard are spelt out in Chapter VI. Some scholars have attributed significance to the presence of the qualifying phrase "in conformity with the principles of justice and international

law" with reference only to the → peaceful settlement of disputes. They inferred that the Security Council was left free, when taking collective measures, to disregard justice and international law whenever it deems it expedient. Whether the Security Council is bound by international law is not made explicit in the Charter, but statements embodied in the Conference reports refer to international law as an implicit normative basis of the Charter.

In addition to the primary purpose of maintaining peace and security, other purposes were provided for in the Charter. The second paragraph calls for the development of "friendly relations among nations based on the principle of equal rights and self-determination of peoples" (→ Self-Determination). This paragraph is implemented in Art. 55. Members' obligations in this regard are set forth in Arts. 56 and 73. In addition, the General Assembly has by unanimous resolution defined the specific obligations related to this purpose (UN GA Res. 2625 (XXV) of October 24, 1970; → Friendly Relations Resolution). The third paragraph sets forth the goal of international cooperation in solving problems of an economic, social, cultural, or humanitarian character (→ International Law of Cooperation) and in "promoting and encouraging respect for human rights and fundamental freedoms" (Art. 1(3)). To initiate studies and make recommendations in this regard, the → United Nations Economic and Social Council (ECOSOC) was established. The concept of human rights mentioned here and in Art. 55 has since been concretized by several General Assembly resolutions (→ Human Rights, Activities of Universal Organizations). Lastly, the Organization is to be a centre for harmonizing the actions of nations in the attainment of the common ends set forth in this Article.

5. Underlying Principles

Art. 2 contains paragraphs declarative of basic principles underlying the Organization (para. 1); paragraphs imposing obligations upon the Organization, both negative (para. 7) and affirmative (para. 6); and paragraphs representing undertakings by members (paras. 2, 3, 4, and 5).

The first numbered paragraph asserts that "the Organization is based on the principle of the sovereign equality of its Members" (→ States, Sovereign Equality). It was observed in San Francisco that the Charter itself imposes substantial limitations upon members' → sovereignty and that permanent members of the Security Council are accorded greater weight in decision-making. A proposal was made in committee to omit the principle of sovereign equality as ironical and inaccurate. However, the principle was included on the understanding that it referred to juridical equality, → territorial integrity and political independence as attributes of all members.

The seventh paragraph represents one of the most important limits upon the reach of the Organization's powers. It prohibits the UN from intervening in "matters which are essentially within the domestic jurisdiction of any state" (→ Domestic Jurisdiction). One exception is made: The principle "shall not prejudice the application of enforcement measures under Chapter VII".

Para. 6 imposes upon the Organization the duty of ensuring that non-members act in accordance with the other principles "so far as may be necessary for the maintenance of international peace and security". In so far as the paragraph may be interpreted as imposing obligations upon non-members without their consent, the paragraph represents an innovation in the international law of treaties (→ Treaties, Effect on Third States). But because of the importance of the principle to the success of the Organization's primary goal, the UN's power to take enforcement action against non-members has been generally accepted.

The remaining principles are addressed to the members of the Organization. Para. 2, providing that all members shall fulfil in → good faith the obligations assumed by them in accordance with the Charter, is superfluous in so far as its substance was already required by → customary international law. The drafters, however, thought it desirable to state the principle explicitly.

The fifth paragraph consists of two parts. The first provides that "all Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter". If taken literally, the phrases "every assistance" and "any action" would give the Organization boundless authority. It is generally held, however, that the paragraph was designed to impose upon

members obligations *vis-à-vis* the Organization no greater than the more specific ones imposed by Arts. 25, 43, and various others. The second part of the paragraph, prohibiting members from assisting any State against which preventive or enforcement action is being taken, is probably more important.

Paras. 3 and 4 contain what are probably the most important of the members' responsibilities under the Charter. So important are these principles to the international community that since their inclusion in the Charter they have been generally regarded as peremptory norms of international law (→ Jus cogens). The third paragraph provides that "[a]ll Members shall settle their international disputes by peaceful means and in such a manner that international peace and security, and justice, are not endangered". The specific obligations of the members and of the Organization – including an inexhaustive list of peaceful methods of dispute settlement – are described in greater detail in Chapter VI.

The fourth paragraph requires all members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". Controversial questions of interpretation have arisen in connection with this paragraph. Is the reference to "force" (→ Use of Force) limited to armed force? When would a build-up of armaments constitute a threat of force? Is the provision of arms (→ Military Aid) to a *de jure* government for use in a → civil war a use of force "against the political independence" of a State? (cf. → Intervention). Is armed force used for humanitarian purposes (→ Humanitarian Intervention) or to save lives "inconsistent" with the purposes of the UN? It is clear that the term "force" encompasses a wider sphere of conduct than the term "aggression" (→ Aggression). It is also clear that the prohibition against the use or threat of force is subject to the "inherent right of individual or collective self-defence" safeguarded by Art. 51 (→ Collective Self-Defence; → Self-Defence).

6. Amendment of the Charter

Art. 108 of the Charter provides that amendments shall come into force for all members of the UN when they have been adopted by two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the members of the UN, including all the permanent members of the Security Council.

Five amendments to the Charter have been adopted under Art. 108. Three of these have enlarged UN organs – an amendment to Art. 23 increased the membership of the Security Council from 11 to 15; amendments to Art. 61 have twice increased the membership of ECOSOC, once from 18 to 27 and then again to 54. Amendments to Arts. 27 and 109 have increased the number of votes required for Security Council decisions.

Amendments to the Charter may also be made pursuant to Art. 109, which provides for the possibility of a general conference of the members of the UN for the purpose of "reviewing" the Charter. Any alteration of the Charter recommended by a two-thirds vote of the general conference would take effect when ratified by two-thirds of the members, including the five permanent members of the Security Council. No general review conference as envisaged by Art. 109 has been held. Proposals for such a conference were considered by the General Assembly in 1955 at its tenth session but were not adopted. The question of Charter review has remained, however, as an item on the agenda of the General Assembly, and a committee on Charter review has met intermittently for many years to consider possible alterations in the Charter. Charter changes have been proposed in that committee but none has been adopted by the General Assembly. In particular, proposals have been made to limit the use of the veto in the Security Council, but no such proposal has been adopted by the General Assembly.

Amendments of the Charter under Arts. 108 and 109 enter into effect for all members, including those which have failed to approve those amendments. This feature of the Charter (which is unusual in treaties) has given rise to the question of whether States dissenting from an amendment may withdraw from the Organization for that reason (→ International Organizations, Membership). The issue has not arisen in practice, but at the founding conference in San Francisco in 1945,

a committee report stated that it would not be the purpose of the Organization to compel a member to remain in the Organization if its rights and obligations were changed by a Charter amendment in which it had not concurred and was unable to accept.

7. Interpretation

The Charter makes no provision for its interpretation (→ Interpretation in International Law). At San Francisco, a proposal to make the ICJ the authoritative interpreter of the Charter was rejected. Instead it was agreed that each organ should be empowered to interpret those parts of the Charter pertaining to its own functions, and that members should be free to interpret parts of the Charter of special concern to them.

Interpretation of the Charter by the UN political organs takes various forms. In some cases, the General Assembly has adopted resolutions which in broad terms lay down principles or rules which are declared to be based upon or inherent in the Charter. A well-known resolution of this character is the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970). Interpretation also takes place through the "practice" of the Organization, in particular when an organ characterizes conduct of member States in specific situations as incompatible with the Charter provisions. The condemnation of → apartheid in South Africa as contrary to the Charter is a notable example of such practice. Interpretation, whether in general terms or in specific cases, may raise questions of whether an interpretation has gone beyond the Charter and was in effect an attempt to amend the Charter without employing the procedures required for amendment. There have also been varying opinions on whether Charter interpretations by the General Assembly are "binding" on the member States. While General Assembly resolutions are not binding *per se*, there appears to be widespread acceptance by member States of the proposition that interpretations agreed to by all States or "generally accepted" should be regarded as authoritative and have obligatory force inasmuch as they express the obligations already accepted in the Charter. However, when member States are divided as to the interpretation or where it is not clear that there has been general agreement, a resolution of the organ would not be regarded as binding *ipso jure* on member States (cf. → International Legislation). Resolutions may, however, be given weight as "practice" to be considered as an element in the interpretation of the Charter.

Interpretation has significantly added to and modified the understanding of the Charter provisions. A prominent example has been the interpretation that the Charter permits the Organization to use armed forces for peacekeeping functions based on the consent of the parties rather than the enforcement provisions of Chapter VII (→ United Nations Forces; → United Nations Peacekeeping System). Another notable example of interpretation is exemplified by the resolutions that implicitly recognize the authority of the General Assembly to censure States for violation of human rights and in some cases to recommend coercive measures (e.g. → Sanctions) against such States notwithstanding the limitation of Art. 2(7) relating to domestic jurisdiction. Broadly speaking, the evolution of the Charter through interpretative resolutions and practice is dependent on political interests and the formation of → consensus within the international community as a whole. While interpretation may be used in some respects to adapt the Charter to new situations and to the changed composition of the international community, basic alteration of the Charter, whether by interpretation or amendment, is highly unlikely as long as most States (and especially the major powers) resist curtailment of their sovereignty.

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OSCAR SCHACHTER

UNITED NATIONS CHILDREN'S FUND

The United Nations Children's Fund (UNICEF), as a subsidiary body of the → United Nations General Assembly, is an integral part of the → United Nations. However, it has its own governing body and staff, and it is financed from its own resources. In accordance with the Declaration of the Rights of the Child (UN GA Res. 1386 (XIV) of November 20, 1959), the Fund's non-political mandate is the special protection to be afforded to the child "to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity" (Principle 2; → Children, International Protection). In view of the importance of its tasks, UNICEF was granted partial legal personality in spite of its subordinate position within the UN system. According to Section (2)(a) of the resolution establishing UNICEF (UN GA Res. 57(1)), it is entitled "to acquire, hold or transfer property, and to take any other legal action necessary or useful in the performance of its objects and purposes". The agreements on the legal relations between UNICEF and countries receiving aid denote UNICEF as an equal partner of these countries under international law.

UNICEF came into being in December 1946, at a time when millions of children were suffering serious malnutrition and deprivation in the aftermath of World War II. The mandate of the United Nations Relief and Rehabilitation Administration (UNRRA), which had been endeavouring to meet the worst of that need, was then drawing to a close (→ United Nations Relief and Rehabilitation Activities). Foreseeing that continued suffering would occur if no further provision were made, the Council of UNRRA recommended that a fund be created for continuing aid to children through the UN, to be financed in part from the residual assets of UNRAA. The General Assembly's resolution establishing UNICEF (Res. 57 (I)) provided that the organization was to be financed not only from these residual assets but also from the voluntary contributions of governments and individuals.

The future of UNICEF was discussed in various UN bodies from the middle of 1949 to the end of 1950. These discussions culminated in a decision by the General Assembly in December 1950 (Res. 417 (V)) to extend the life of the Fund for three years, shifting its main emphasis toward programmes of long-range benefit to children in → developing States. In October 1953 the General Assembly by Resolution 802 (VIII) continued UNICEF indefinitely, reaffirming the broader terms of reference which it had established for the Fund in 1950. The words "International" and "Emergency" were dropped from the name, which became the United Nations Children's Fund; the acronym "UNICEF" by which the organization is still best known, was, however, retained.

UNICEF is governed by an Executive Board of 30 government representatives which meets annually. Ten members are elected each year for three-year terms by the → United Nations Economic and Social Council (ECOSOC). In accordance with UN GA Resolution 1038 (XI) adopted in 1956 (amending Res. 417 (V)), ECOSOC elected the members "with due regard to geographical distribution and to the representation of the major contributing and recipient countries". On the basis of documentation submitted by the Executive Director, the Board reviews UNICEF's work and its prospects, determines policy, approves a medium-term plan, considers requests and makes commitments for programme cooperation, approves financial reports and determines and commits funds for the administrative services and programme support budgets.

To assist it in its work, the Board has established a programme committee, which is a committee of the whole, and a committee on administration and finance, which currently has 18 members. The chairman of the Board and the chairmen of the committees are elected for one year. The chairmanship is rotated between members of delegations from developing and industrialized countries. Responsibility for the day-to-day administration and staff appointments to the Fund is in the hands of an Executive Director appointed by the → United Nations Secretary-General in consultation with the Executive Board. UNICEF staff, which number over 1700 and serve in 80 different locations, are UN officials subject to UN staff regulations administered by the Executive Director.

UNICEF is financed by voluntary contributions from governments in both industrialized and developing regions and from organizations and individuals. The UN financial regulations and rules are applied by UNICEF with such adjustments and substitutions as are required by the nature of its work. In view of the considerable increase in the budget in the last few years (it now amounts to approximately US $400 million), a biennial budget similar to that used by the UN has been adopted for the years 1982–1983.

As of 1982, UNICEF is engaged in assisting 108 countries in three major spheres: assistance in planning and designing services for children (which UNICEF defines as persons up to and including 15 years of age), delivery of supplies and equipment for these services, and provision of funds for training personnel needed to work with and for children. The countries assisted by UNICEF are divided for programming purposes into three groups. The first group, countries needing special assistance, includes those designated by the UN as "least developed countries" and small nations with a child population of under 500 000. Countries which receive UNICEF's "normal" level of assistance comprise the second group; these States are in the middle range of development. The third group covers countries which have reached a more advanced stage of development, but which still require outside assistance due to particular needs such as lack of trained personnel.

UNICEF's original mandate was to assist, primarily, children in "countries which were victims of aggression". This is reflected in the Fund's present responsibility to act as the lead agency in crisis situations (for example, in Kampuchea between 1979 and 1982). Nevertheless, its primary objective is to help the children who are in greatest need throughout the world. A central feature of UNICEF's programmes is the "basic services" approach. The development of this approach, which emphasizes meeting the basic needs of the majority through community participation and the use of appropriate technology and expertise, is an attempt to devise better strategies for development and human well-being (→ International Law of Development; → International Economic Order). Over the years it has had a considerable record of success, as acknowledged in 1965 by the award of the Nobel Peace Prize. In 1979 it bore the prime responsibility for promoting the International Year of the Child, for which work the General Assembly expressed its "deep appreciation", designating the fund as the lead agency in coordinating follow-up activities (UN GA Res. 35/79).

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JOACHIM WOLF

UNITED NATIONS COMMISSION ON HUMAN SETTLEMENTS

1. Historical Background

The → United Nations, under the responsibility of the → United Nations Economic and Social Council (ECOSOC), after World War II created programmes to help in relieving the problems of human settlements. It established an organizational structure consisting of a Committee on Housing, Building and Planning as a consultative

organ, a group of ten experts for the coordination of the work of different organizations and the regional commissions (→ United Nations, Economic Commissions) of the UN operating in this field, and a Centre for Housing, Building and Planning as part of the Secretariat's Department of Economic and Social Affairs. However, results were rather poor due to lack of financing.

The Stockholm Conference on the Human Environment of 1972 devoted Principle 15 of its "Declaration of Principles" and recommendations 1 to 18 of its "Action Plan for the Human Environment" to problems of settlement and housing. The organizational responsibility was transferred to the → United Nations Environment Programme (UNEP), which was instrumental in the creation of the International Habitat and Human Settlements Foundation for the collection of voluntary contributions (UN GA Res. 3327 (XXIV) of December 16, 1974). Finally, a special conference, the "Habitat: United Nations Conference on Human Settlements", was convened by the → United Nations General Assembly and held at Vancouver, Canada from May 31 to June 11, 1976.

The final "Report of Habitat: United Nations Conference on Human Settlements" consists of three chapters. Chapter I, Declaration of Principles (Vancouver Declaration on Human Settlements 1976), contains general goals, principles and guidelines for States and international organizations. Chapter II, Recommendations for National Action, is devoted to often very detailed recommendations for State action in six different fields. Chapter III, Recommendations for International Cooperation, recommends practical programmes and principles of cooperation between States as well as creation of a special global inter-governmental body within the organizational framework of the UN but separate from UNEP. The General Assembly transformed the Committee on Housing, Building and Planning into a Commission on Human Settlements (UNCHS) and created a secretariat entitled "Centre for Human Settlements (Habitat)" (UN GA Res. 32/162 of December 19, 1977). The Foundation was integrated into and maintained within the new structure. The UNCHS and the Centre are located in Nairobi, Kenya.

2. Structure

(*a*) *The Commission*

The Commission has 58 members, elected for three-year terms (16 seats for African States, 13 for Asian States, 6 for East European States, 10 for Latin American States, 13 for West European and other States). Its main functions and responsibilities as a governing body are:

"(a) To develop and promote policy objectives, priorities and guidelines regarding existing and planned programmes of work in the field of human settlements. . . ;

(b) To follow closely the activities of the United Nations System and of other international organizations in the field of human settlements and to propose, when appropriate, ways and means by which the over-all policy objectives and goals in the field of human settlements within the UN system might best be achieved;

(c) To study. . . new issues, problems and especially solutions in the field of human settlements, particularly those of a regional or international character;

(d) To give over-all guidance and carry out supervision of the operations of the United Nations Habitat and Human Settlements Foundation;

(e) To review and approve periodically the utilization of funds at its disposal. . .;

(f) To provide over-all direction to the secretariat of the Centre;

(g) To review and provide guidance on the programme of the United Nations Audio-Visual Information Centre on Human Settlements established by virtue of General Assembly resolution 31/115 of 16 December, 1976."

(*b*) *The Secretariat*

The Centre for Human Settlements (Habitat) consists of the old Centre for Housing, Building and Planning, the UN Habitat and Human Settlements Foundation, and the appropriate section of the Division of Economic and Social Programmes of UNEP. The head of the secretariat, the Executive Director, is responsible for the management of the Centre, which has, *inter alia*, the following responsibilities: to ensure the har-

monization at the inter-secretariat level of human settlement programmes planned and carried out within the UN system; to assist the Commission in coordinating human settlement activities in the UN system; to keep such programmes and activities under review and to assess their effectiveness; to execute projects; to provide the focal point for a global exchange of information; to provide substantive support to the Commission; to deal with inter-regional matters; to supplement the resources of the regions; to establish and maintain a global directory of experts to assist in recruitment at the global level; and to implement programmes until they are transferred to the regional organizations.

(*c*) *Committees on settlements*

In some of the UN regional commissions, regional committees on settlements are responsible for the formulation of regional and subregional policies and programmes and for their implementation. Secretariat units give them the necessary support.

(*d*) *Legal character*

The UNCHS as defined by Res. 32/182 is not an independent international organization, but rather a subsidiary organ of the General Assembly pursuant to Art. 22 of the → United Nations Charter. For its activities, the Commission is responsible to the General Assembly, to which an annual report on its session is transmitted through ECOSOC. Both the General Assembly and ECOSOC discuss the reports and take decisions on those matters on which they have to act. The General Assembly also establishes directives and guidelines for the Commission, decides the budgetary programme (→ International Organizations, Financing and Budgeting) and approves the work programmes of the UNCHS, which form part of the UN's general programmes.

(*e*) *Rules of procedure*

The Commission's activities are regulated by Rules of Procedure adopted at the third session of the Commission. It meets annually. For a decision, the majority of those present and voting is required (Rule 46; → Voting Rules in International Conferences and Organizations). But generally, decisions are taken by → consensus (Rule 44). The Commission gives directives and guidelines to the Centre, while the Centre prepares the proposals on which the Commission acts. These proposals are often cleared by informal → consultations with member States' → governments before the annual meeting of the Commission. During the annual sessions of the Commission, committees are created to discuss the proposals and to prepare the decisions of the Commission in plenary session (Rules 17 to 19). The Commission is bound by formal decisions of the General Assembly. Drafts of work and budget programmes have to be submitted to the appropriate bodies within the UN, i.e. the Office of Financial Services, the Office for Programme Planning and Coordination, and the Department of International Economic and Social Affairs.

(*f*) *Financing*

Normal administrative costs, as well as a minor part of the implementation costs of the approved work programmes, are paid for out of the regular UN budget. The main costs of the work programmes, including their staff and non-staff administrative costs, are, however, financed by extrabudgetary funds coming from voluntary contributions of the member States. Since the integration of the Foundation into the Centre, those contributions have constituted integral parts of the funds of the UNCHS.

3. Activities

The Conference of Vancouver set the general framework for human settlement programmes by choosing six fields of activity: settlement policies and strategies; settlement planning; shelter infrastructure and services; land-use policy; public participation; and institutions and management. All of the activities of the UNCHS are fixed by medium-term plans and biennial work programmes of which the six fields are sub-programmes. They are broken into smaller elements which describe specific activities and contain the estimates of the costs as well as of the financing methods, either through the regular budget or through extrabudgetary funds. Priority is placed on the third field: shelter infrastructure and services.

In these fields, UNCHS activities are manifold. First, the UNCHS supports and stimulates mainly

local projects undertaken by States, regional bodies, or international organizations. The UNCHS does not develop or realize settlement projects of its own or give financial assistance. This has to come either from the States themselves or from other international bodies or organizations such as the → United Nations Development Programme or the → International Bank for Reconstruction and Development. Second, it itself engages in or supports research on the development of appropriate construction techniques, organizational structures, financing schemes, and planning procedures. Third, it provides for analysis and studies in various fields concerning human settlements in the States and in the different regions. Furthermore, it collects and disseminates information and supports the training of personnel by seminars, conferences, expert meetings, and preparation of appropriate training material such as films, etc. It prepares guidelines on special problems for national action.

A major activity lies in the encouragement of regional and subregional cooperation, especially among the → developing States. Coordination of the activities of other organizations and cooperation with them are also important activities of the UNCHS.

4. Special Legal Problems

The UNCHS is not a law-making body (→ International Legislation) and has no financial power. In so far as the UNCHS participates in national activities or cooperates with national institutions, agencies or authorities, special arrangements have to be concluded which vary considerably depending upon the specific circumstances.

5. Evaluation

The UNCHS is a part of the international technical public service system by which international cooperation in the process of solving practical problems is organized. There are some indications that the work of the UNCHS is recognized as useful. Voluntary contributions have increased, although they are still too low for the UNCHS to achieve all its goals. Cooperation with other international bodies within the UN system and with other international organizations is continuing to develop. At conferences of the Commission, a wide consensus generally exists on the activities envisaged and especially on overall trends to be followed in its work. As a special body inside the UN, the UNCHS did not require a lengthy process of establishment. The responsibility for its work is borne by all members of the UN; the integration of its work into the general activities of the UN is thus assured. Even though the decision-making process is more complicated than in other organs due to the many organs participating in it, the integration into the UN seems to be more advantageous than existence as a separate international organization would be.

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

A. Historical Background

By Resolution 2205 (XXI) of December 17, 1966, the → United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) with a view to reducing divergencies between the trade laws of different States, which were seen as one of the obstacles to the development of world trade.

Previous contributions by other organizations to the → unification and harmonization of laws were recognized with appreciation. However, progress was not deemed commensurate with the importance and urgency of the problem, due to insufficient coordination and cooperation between these organizations, their limited membership or authority, and the small degree of participation by → developing States (cf. the failure of the 1948 → Havana Charter). Yet it was precisely the developing countries that especially needed adequate and modern laws towards gaining equality in their trade relations with others. Promotion of their trade was, in turn, crucial for their development in general (→ International Law of Development). The awareness of this link led, for example, to the creation in 1964 of the → United Nations Conference on Trade and Development (UNCTAD) and to the addition of a chapter on "Trade and Development" to the → General Agreement on Tariffs and Trade (see also → World Trade, Principles).

B. Object and Functions

The object of UNCITRAL is to promote the progressive harmonization and unification of the law of international trade. To this end, it is to coordinate the work of organizations active in this field and encourage cooperation; promote wider acceptance of existing international conventions and model or uniform laws; prepare or promote the adoption of new conventions or laws and promote the codification and acceptance of international trade terms, customs and practices; promote means of ensuring a uniform interpretation and application of international conventions and uniform laws; collect and disseminate information on national legislation and modern legal developments, including case-law.

C. Structure; Working Methods

Unlike, for example, the → International Law Commission, which specializes in public international law, UNCITRAL is composed not of individuals but of States (initially 29; in 1973, enlarged to 36: 9 African, 7 Asian, 5 Eastern European, 6 Latin American, and 9 Western European and other States; UN GA Res. 3108 (XXVIII)).

The Commission holds one regular session a year, alternately in New York and Vienna (earlier, Geneva); the first session was in 1968. It reports directly to the General Assembly and submits its annual report also to UNCTAD for comments. Specific projects are often entrusted to working groups, usually composed of a limited number of UNCITRAL members. However, non-members may attend the sessions of the working groups, as is the case with regard to the Commission itself; their active participation is facilitated by UNCITRAL's traditional adherence to the → consensus principle. Legal texts prepared by working groups are submitted to all governments and interested organizations for comments. The Commission reviews each draft in the light of these comments before adopting a final text. The text may be in the form of a model law, which States may incorporate in their legislation, or of model rules or clauses, which may be included in commercial contracts, or of a legal guide, which may assist parties in negotiating a contract. If a text is to be embodied in a convention, it is again circulated for comments and submitted to a diplomatic conference open to all States (→ Congresses and Conferences, International). For determining the desirability and feasibility of a certain project and preparing acceptable rules, additional advice and information may be sought from an expert or an *ad hoc* study group of experts, from pertinent inter-governmental or non-governmental organizations, and from relevant trade circles. The Commission and its working groups are assisted by a secretariat, the International Trade Law Branch of the Office of Legal Affairs, which in 1979 was moved from New York to Vienna. The secretariat, conferences and other services rendered to UNCITRAL are financed out of the regular budget of the → United Nations.

D. Activities

1. Formulation of Legal Texts

Most of the time and efforts of the Commission and its working groups have been devoted to the formulation of legal texts. These texts are not on → private international law in the conflict of laws sense but on substantive law in respect of international trade. The varied subject matters dealt with relate to the following priority topics selected

by the Commission: international sale of goods, payments, → commercial arbitration, shipping (→ Maritime Law) and contract practices.

(*a*) *International sale of goods*

UNCITRAL's work has resulted in three legal instruments. Based on a draft prepared by UNCITRAL, the Convention on the Limitation Period in the International Sale of Goods (New York, June 12, 1974) provides for a uniform limitation (→ Prescription) period during which a party may exercise a claim arising out of an international sales transaction. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, April 11, 1980) covers a wide range of sales law matters, including the formation of contract and the rights and obligations of sellers and buyers and their respective remedies in case of breach of contract. It may be viewed as the culmination of 50 years of unification efforts which had led to the uniform laws annexed to two conventions signed at The Hague on July 1, 1964 (→ Sale of Goods, Uniform Laws). Once it was clear that these laws would not command world-wide acceptance, UNCITRAL prepared a new draft maintaining their basic features but with a number of improvements in terms of substance, structure and drafting style. Above all, the Vienna Convention was the result of a truly global effort, with adequate representation of all regions and economic and legal systems. The Conference also adopted a Protocol amending the Convention on the Limitation Period, in order to align its scope of application with that of the new Convention.

(*b*) *International payments*

Major efforts relate to the unification of the law of negotiable instruments, to overcome disparities between the common law (e.g. United Kingdom Bills of Exchange Act (1882); United States Uniform Commercial Code) and the civil law systems (e.g. the series of conventions signed in Geneva in 1930 and 1931 on bills of exchange, promissory notes and cheques; → Bills of Exchange and Cheques, Uniform Laws). Draft conventions prepared by UNCITRAL on bills of exchange, promissory notes, and cheques contain modern rules, acceptable in both systems and for optional use in international transactions. Another subject under consideration is electronic funds transfer, in particular, such legal issues as the finality of payment, the liability for delayed or incorrect payment instructions, and the evidential value of computer records. This effort, though not of immediate interest to each State, is unique in the field of unification as a measure of preventive care, i.e. to find common approaches and solutions already at an early stage of technological developments before legal divergencies arise. Yet another project is to establish a universal unit of account of constant value to be used as a point of reference for expressing amounts in monetary terms (e.g. liability limits) in international conventions (→ Monetary Law, International; cf. → European Monetary Cooperation).

(*c*) *International commercial arbitration*

A major achievement was the preparation of the UNCITRAL Arbitration Rules (1976). Based on modern practice and acceptable in the different legal systems, they are increasingly referred to in commercial contracts and used by arbitral bodies around the world (e.g. the Inter-American Commercial Arbitration Commission; the Regional Arbitration Centres in Cairo and Kuala Lumpur; the Stockholm Chamber of Commerce and its "Optional Arbitration Clause for Use in Contracts in USA–USSR Trade, 1977"; and the Iran–United States Claims Tribunal established under the → United States–Iran Agreement of January 19, 1981 (Hostages and Financial Arrangements)). To further facilitate international commercial arbitration, a model law is being prepared, tailored to the specific features of international cases. Presenting a viable alternative to arbitration, the UNCITRAL Conciliation Rules (1980) are designed to guide parties seeking to settle their dispute amicably with the assistance of an independent third person.

(*d*) *International legislation on shipping*

UNCITRAL prepared, upon request and initial studies by UNCTAD, the draft for the United Nations Convention on the Carriage of Goods by Sea, 1978 (March 31). These so-called "Hamburg Rules" seek to remove uncertainties encountered with the "Hague Rules" (embodied in the Brussels Convention for the Unification of Certain Rules relating to Bills of Lading of August 25,

1924). They also take into account modern transport techniques and provide for a more balanced allocation of risk between the cargo owner and the carrier, in harmony with the present laws on other modes of transport.

(e) International contract practices

Work is directed either to specific clauses used in many kinds of contracts or to specific types of contracts and their typical provisions. Clauses under consideration include liquidated damages or penalty clauses, on which uniform rules have been drafted, and clauses protecting parties against the effects of currency fluctuations. As to specific types of contracts, priority is given to the preparation of a legal guide on contracts for the supply and construction of large industrial works, then to contracts on research and development, consulting, engineering, → technology transfer (including licencing), service and maintenance, technical assistance, leasing, joint ventures (→ Joint Undertakings), and industrial cooperation in general (→ Industrial Property, International Protection). These contracts are important in the field of industrial development and thus of special relevance to developing States and to the establishment of a new → international economic order.

2. Coordination and Cooperation

One of the functions of UNCITRAL is to coordinate legal activities in the field of international trade law, in order to avoid the duplication of efforts, the waste of resources, and the adoption of conflicting legal instruments (originally mandated in General Assembly Resolution 2205 (XXI) of December 17, 1966, reaffirmed by Resolutions 34/42 of December 17, 1979, 35/51 of December 4, 1980 and 36/32 of November 13, 1981). As a necessary first step, information is exchanged on the work programmes of the various organizations, by mutual participation in sessions, contacts at the secretariat level, and correspondence. Annual reports list the current activities of other organizations (particularly extensive: report of 1981, UN Doc. A/CN.9/202 and Addenda). Cooperation may take the form of comments and suggestions on rules drafted by other formulating agencies or of recommendations and endorsements of such texts (e.g. Incoterms, and Uniform Customs and Practice for Documentary Credits, prepared by the → International Chamber of Commerce). A more recent form is the participation of UNCITRAL members, for the sake of universality, at conferences dealing with drafts prepared by organizations with limited membership (e.g. the International Institute for the Unification of Private Law (UNIDROIT), and the Hague Conference on Private International Law; → Hague Conventions on Private International Law).

3. Dissemination of Information and Training

Information on international trade law is disseminated by various publications. A Register of Texts has been published of (non-UNCITRAL) conventions and other instruments concerning international trade law. Reports and background studies by the secretariat often contain information on national laws and recent legal developments, including case-law. These materials, together with the reports of the Commission and its working groups, are reproduced in the UNCITRAL Yearbook. Training and assistance, in particular to young lawyers from developing countries, is provided by symposia, concurrent with a session of the Commission, or by regional seminars, in cooperation with other organizations.

E. Evaluation

UNCITRAL's activities and achievements justify the expectation of further valuable contributions to the development of international trade law, in particular by preparing uniform rules specifically geared to international trade practice. Its major distinctive factor and asset is the universal representation of States participating in the determination of whether a project is desirable and feasible on a global level and in the elaboration of acceptable, workable rules (in the six official UN languages: Arabic, Chinese, English, French, Russian, Spanish). The various regions and economic and legal systems are not only adequately represented but also equally interested in the success of the work, even where the economic stakes are high. Another asset is UNCITRAL's pragmatic and practice-oriented approach to solving technical legal issues. With increasing efforts in the difficult task of coordination

and cooperation, UNCITRAL is playing a central role in the progressive development of uniform and improved rules for international trade.

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GEROLD HERRMANN

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

1. Background

The resolution by which the → United Nations General Assembly established the United Nations Conference on Trade and Development (UNCTAD) as an organ of the General Assembly was adopted on December 30, 1964 (UN GA Res. 1995 (XIX)). The establishment of UNCTAD was one of several efforts initiated by States to fill the void created by the failure of the 1948 → Havana Charter on Trade and Employment to enter into force. The Havana Charter provided for the establishment of an International Trade Organization (ITO) with functions ranging from negotiation of tariff reductions to the consideration of stabilization of the prices of primary commodities (→ Commodities, International Regulation of Production and Trade). When the ITO failed to come into existence, the issues raised in the Havana Charter were quickly addressed in essentially two fora. The negotiation of tariff concessions, which started on a provisional basis pending the entry into force of the Havana Charter, was put on a permanent footing in the → General Agreement on Tariffs and Trade (GATT). The issues relating to matters other than tariffs became subjects of general consideration in the deliberations of the → United Nations Economic and Social Council (ECOSOC). That Council established bodies such as the Commission on International Commodity Trade (CICT) and the Interim Co-ordinating Committee for International Commodity Arrangements (ICCICA) to apply, albeit in the form of guidelines, the principles outlined in Chapter VI of the Havana Charter in inter-governmental consultations on commodity matters.

The various actions taken, however, failed to fill adequately the gap created by the non-entry into force of the Havana Charter. Nor did they satisfy the aspirations of the growing number of → developing States for an organization which would address itself to those questions of trade and development of particular importance to them. Their increasing awareness that the acceleration of their development could not be left to free trade and the free play of market forces in world markets for capital goods, technology and services but rather required deliberate policies and measures to promote their trade and development, combined with the conviction that a bold new programme of international economic cooperation was needed, led to the convening by ECOSOC of the United Nations Conference on Trade and Development in Geneva from March to June 1964. In its Final Act, it recommended that the General Assembly establish the United Nations Conference on Trade and Development as an organ of the General Assembly. This recommendation, as well as the ones dealing with the functions and institutional arrangements of UNCTAD, were subsequently embodied in General Assembly Resolution 1995 (XIX).

2. Structure

The members of UNCTAD are those States which are members of the UN, of the Specialized Agencies (→ United Nations, Specialized Agencies), or of the → International Atomic Energy Agency. The Conference, as of September 1, 1981, had a membership of 162 States plus → Namibia, represented by the United Nations

Council for Namibia, i.e. more than the total membership of the → United Nations itself. The Conference is the highest authority of UNCTAD, and is convened at intervals of not more than four years. Since its first session at Geneva in 1964, it has met in New Delhi (1968), Santiago de Chile (1972), Nairobi (1976), and Manila (1979).

The principal functions of the Conference are:

"(a) To promote international trade, especially with a view to accelerating economic development, particularly trade between countries at different stages of development, between developing countries and between countries with different systems of economic and social organization, taking into account the functions performed by existing international organizations;

(b) To formulate principles and policies on international trade and related problems of economic development;

(c) To make proposals for putting the said principles and policies into effect and to take such other steps within its competence as may be relevant to this end, having regard to differences in economic systems and stages of development;

(d) Generally, to review and facilitate the co-ordination of activities of other institutions within the United Nations system in the field of international trade and related problems of economic development, and in this regard to co-operate with the General Assembly and the Economic and Social Council with respect to the performance of their responsibilities for co-ordination under the Charter of the United Nations;

(e) To initiate action, where appropriate, in co-operation with the competent organs of the United Nations for the negotiation and adoption of multilateral legal instruments in the field of trade, with due regard to the adequacy of existing organs of negotiation and without duplication of their activities;

(f) To be available as a centre for harmonizing the trade and related development policies of Governments and regional economic groupings in pursuance of Article 1 of the Charter;

(g) To deal with any other matters within the scope of its competence." (Res. 1995 (XIX), para. 3).

Resolution 1995 (XIX) established the Trade and Development Board as a permanent organ of the Conference and as part of the UN machinery in the economic field (→ Economic Law, International). When the Conference is not in session, the Board carries out the functions that fall within the competence of the Conference. In addition, it performs those functions specifically assigned to it by Resolution 1995 (XIX) (paras. 14–23), and serves as a preparatory committee for future sessions of the Conference. To this latter end, it initiates the preparation of documents, including a provisional agenda, for consideration by the Conference, and makes recommendations on the date and place for its convening.

Until the adoption of Resolution 31/2 on September 29, 1976, by which the General Assembly made the membership of the Board open to all States members of the Conference, the Board comprised a limited number of States members of the Conference elected by the Conference with "full regard for both equitable geographical distribution and the desirability of continuing representation for the principal trading States" (Res. 1995 (XIX), para. 5). The 1976 amendment made it possible for any State member of the Conference which was not a member of the Board at the time of the adoption of the amendment to become a member by simple application. As of September 1, 1981, the membership of the Board stood at 122. The Board normally meets twice in any particular year, but it may, in addition, hold special sessions which are to be convened under its rules of procedure.

Pursuant to para. 23 of General Assembly Resolution 1995 (XIX), the Board has, since its inception, established six main Committees, as well as a Special Committee on Preferences as its subsidiary organs. The six main Committees are: the Committee on Commodities; the Committee on Manufactures; the Committee on Invisibles and Financing related to Trade; the Committee on Shipping; the Committee on Transfer of Technology; and the Committee on Economic Cooperation among Developing Countries. The Board has also decided to establish a Sessional Committee, at its first annual regular session, to deal with protectionism and structural adjustment, and another Sessional Committee, at its second annual regular session, to consider trade

relations among countries having different economic and social systems. In addition to these committees, the Board has, from time to time, established *ad hoc* subsidiary bodies to carry out specific tasks.

The Conference, the Board and its subsidiary bodies are served by a permanent and full-time secretariat within the UN secretariat, and it is headed by the Secretary-General of the Conference who is appointed by the → United Nations Secretary-General and confirmed by the General Assembly.

The regular budget of UNCTAD is part of the regular UN budget. Arrangements are made for assessments on States which are members of UNCTAD, but not of the UN.

Each member of the Conference, the Board and the subsidiary bodies has one vote, and decisions of these bodies are taken by a simple majority of the members present and voting. It has become a practice in UNCTAD to adopt unanimous decisions or decisions by → consensus, and voting is resorted to only in exceptional circumstances where all efforts to reach agreement have failed (→ Voting Rules in International Conferences and Organizations). Resolution 1995 (XIX) (para. 25) makes provision for a process of conciliation, before proceeding to a vote, on matters substantially affecting the economic or financial interests of particular member countries.

The negotiating and decision-making process in UNCTAD has come to be based on an informal system of Groups (the Group of 77, Group B, Group D and China), which are political rather than official in nature. The Group of 77, the group of developing countries, was born in UNCTAD. It is named after the original 77 signatories of the Declaration of the Seventy-Seven Developing Countries adopted at the conclusion of the first session of UNCTAD, and, as of September 1, 1981, had 122 members. It includes the States enumerated in List A in the annex to Resolution 1995 (XIX) (with the exception of China, Israel, Mongolia and South Africa), two States in List B (Cyprus and Malta), the States in List C and one State in List D (Romania), as well as the → Palestine Liberation Organization. Group B, otherwise known as the group of developed market-economy countries, includes the States enumerated in List B, with the exception of Cyprus and Malta. The 28 countries in Group B include the 24 members of the → Organisation for Economic Co-operation and Development (OECD), plus the → Holy See, → Liechtenstein, → Monaco and → San Marino. Group D includes the nine socialist countries of Eastern Europe, other than Romania, enumerated in List D. Mongolia associates itself with Group D.

The informal group system in UNCTAD also provides the basis for the application of the principle of equitable geographical distribution in the election of officers in UNCTAD, and in the election of the members of the subsidiary bodies of limited membership of the Conference and of the Board.

3. Activities

The activities of UNCTAD have focused mainly on the restructuring of international economic and trade relations with the aim of increasing the share of the developing countries in world trade and accelerating their economic growth (→ Economic Law, International; → International Economic Order; → World Trade, Principles). These activities have entailed the translation of specific principles and guidelines into policies and agreements, some of them of a legally-binding character (cf. → International Legislation; → Treaties).

In addition to seeking an overall reorientation of trade and the promotion of development, UNCTAD has been endeavouring to find specific solutions to trade and trade-related problems encountered by the developing countries, and in particular economic sectors of vital importance to their development, including commodities, manufactures, money and finance, the transfer of technology (→ Technology Transfer), shipping, and insurance. It has also devoted attention to the expansion of trade relations among countries having different economic and social systems, and all trade flows resulting therefrom. More recently, the decisions of the Conference have imparted a major new thrust to UNCTAD's programmes on economic cooperation among developing countries and on the least developed among the developing countries, land-locked and island developing countries (→ Land-Locked and Geographically Disadvantaged States).

(*a*) *Commodities*

In the field of primary commodities, UNCTAD has the responsibility for convening negotiating conferences for the conclusion of international commodity agreements designed, *inter alia*, to stabilize the prices of such primary commodities. Erratic price fluctuations producing in certain instances severe declines in export earnings have long been a major problem for the developing countries, which are heavily – and in some cases exclusively – dependent on the export of such commodities. Since the fourth session of UNCTAD in 1976, intensive efforts are being made to implement the Integrated Programme for Commodities (IPC) aimed at global action to improve market structures in international trade in commodities of interest to developing countries within a time-bound framework. Eighteen such commodities are embodied in the IPC. Recent conferences convened by UNCTAD have concluded international commodity agreements on sugar, olive oil, natural rubber, cocoa and tin. Preparatory work is proceeding on other commodities. An agreement was adopted on June 27, 1980 for the establishment of a Common Fund for Commodities (→ Commodities, Common Fund) to help finance buffer-stocking operations for those commodity arrangements which use the mechanism of buffer stocks to regulate prices, as well as to finance commodity development measures. Following decisions taken at the fifth session of the Conference in 1979, work has been initiated on compensatory financing for commodity-related shortfalls in export earnings and certain developmental aspects of commodity policy such as processing, marketing and distribution.

(*b*) *Manufactures*

UNCTAD's work in the field of manufactures has concentrated on measures to expand and diversify the exports of manufactures and semi-manufactures of developing countries and thereby to contribute to their industrial development. To that end, at its first session in 1964, it recommended that the industrialized countries should not require observance of the principle of → reciprocity in their trade relations with the developing countries. In the same spirit, UNCTAD advocated the establishment of a generalized system of preferences for the benefit of the developing countries.

At the second session of the Conference in 1968, in response to demands made by the developing countries, unanimous agreement was reached in favour of the establishment of a mutually-acceptable system of generalized, non-reciprocal preferences which would be beneficial to the developing countries. Pursuant to this decision, and in accordance with the "agreed conclusions" adopted by the member States in 1970, the developed countries began to implement the Generalized System of Preferences (GSP). Beginning in July 1971, schemes of tariff preferences were gradually introduced by most of the developed countries. UNCTAD is currently seeking to improve the GSP in the context of a comprehensive strategy for industrial development and industrial exports. Following the decisions taken recently by the Conference and the Board, work is progressing to provide a basis for action at the inter-governmental level to deal with the problem of protectionism and structural adjustment. Work is also continuing in the field of restrictive business practices in accordance with the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the UN General Assembly on December 5, 1980 (GA Res. 35/63) (→ Antitrust Law, International).

(*c*) *Money and finance*

In the area of money and finance, considerable emphasis has been given by UNCTAD to the functioning of the international monetary system and its impact on the development process (→ Monetary Law, International). Thus, issues such as the functioning of the adjustment process, the adequacy of present payments arrangements, both with regard to their size and conditionally, the creation and equitable distribution of international liquidity, including the question of a link between the creation of Special Drawing Rights (SDRs) and development assistance, and decision-making processes in the → Bretton Woods institutions, have been of concern to UNCTAD (see also → Financial Institutions, Inter-Governmental; → International Monetary Fund; → International Bank for Reconstruction and Development).

UNCTAD has also devoted attention to the question of ensuring consistency between targets on financial flows and development objectives, improving the terms and conditions of assistance and to examining new mechanisms to strengthen the system of international financial cooperation (→ Economic and Technical Aid; → International Law of Development). UNCTAD helped to evolve the concept of the target of 0.7 per cent of the Gross National Products of developed countries for concessional assistance included in the various International Development Strategies.

One consequence of the inadequacies of the international financial system, in particular the failure to attain the norms set by the international community concerning concessional finance, has been a rapid deterioration in the external debt of developing countries (→ Loans, International). An agreement reached in UNCTAD in 1978 on retroactive adjustment of terms of official debts of poorer developing countries has provided some relief to some 45 developing countries, although it remains to be fully implemented. Further, as the agreement concerns only a relatively small part of the aggregate debt of developing countries, UNCTAD continues to examine the present debt servicing problems of developing countries with a view to proposing appropriate solutions. An agreement was reached in 1980 concerning detailed guidelines for dealing with future multilateral debt relief operations of interested developing countries.

(*d*) *Technology transfer*

In the field of transfer and development of technology, UNCTAD is contributing to the technological transformation of developing countries through the restructuring of the relationships between technology suppliers and recipients, as well as to the strengthening of their technological capacity. An international code of conduct on the transfer of technology is being negotiated with a view to establishing general and equitable standards on which to base the relationships among parties to transfer of technology transactions and governments concerned, taking into consideration their legitimate interests, and giving due recognition to the special needs of developing countries for the achievement of their development objectives.

(*e*) *Shipping and insurance*

Recognizing the close link between the structure and direction of trade and the organization of shipping markets, UNCTAD has devoted considerable attention to the development of the merchant fleets of developing countries, as well as of their → port facilities and related inland transport infrastructure. The restructuring of the world shipping market with a view to enabling the developing countries to increase their participation in the carriage of seaborne cargoes generated by their own foreign trade, the question of technological change in shipping and multimodal transport, and the development of port facilities have all received intensive consideration in UNCTAD (→ Traffic and Transport, International Regulation).

Following the negotiations held in UNCTAD, a UN Convention on a Code of Conduct for Liner Conferences was adopted on April 6, 1974, aimed at regulating on equitable principles the relationship among member lines of a liner conference, on the one hand, and the relationship between shippers and liner conferences on the other, including such matters as the level and structure of freight rates and the adequacy of shipping services (→ Maritime Law). The Convention is expected to enter into force early in the 1980s.

Work is now in progress on measures to increase the participation of developing countries in the carriage of bulk cargoes generated by their own foreign trade. These have concentrated on the institutional structural barriers to such participation, including the open registry régime (→ Ships, Nationality and Status) and the control over bulk movements exercised by transnational corporations (→ Transnational Enterprises).

A Working Group on International Shipping Legislation (a subsidiary body of the Committee on Shipping), which deals with the economic and commercial aspects of international shipping legislation and practices, initiated work on the Convention on a Code of Conduct for Liner Conferences, and also on the revision of the 1924 Brussels Convention on Bills of Lading which led to the adoption of the United Nations Convention on the Carriage of Goods by Sea on March 31, 1978. It is currently drawing up model rules for international marine insurance policies, and giving

consideration to the question of charter parties and other subjects.

In the area of invisibles, UNCTAD is also contributing to the development and expansion of national insurance industries in developing countries.

(*f*) *Stimuli to trade*

Trade flows between socialist countries of Eastern Europe and developing countries have been expanding rapidly. However, they are still far from having reached a dimension commensurate with the great potential offered by the development of their respective economies. UNCTAD is contributing to the formulation, adoption and implementation of policy measures directed at the further expansion and diversification of trade and at the promotion of various forms of economic cooperation, taking into account the particular institutional features of the economies concerned.

UNCTAD has also been active in supporting the efforts of the developing countries to promote economic cooperation among themselves in the pursuit of their collective self-reliance and as an important element for improving their position in the world economy. Efforts are being made by the developing countries to expand economic and trade relations among themselves through, *inter alia*, the establishment of a global system of trade preferences and the creation of multilateral enterprises or joint ventures in various fields, as well as to strengthen their bargaining position and market strength.

UNCTAD has been designated as the focal point within the UN system to deal with the problems of the least developed, land-locked and island developing countries. It has played a major role in the formulation and elaboration of special measures in favour of the least developed countries, on whose behalf a UN Conference was convened in Paris in September 1981, resulting in the adoption of a Substantial New Programme of Action for the Least Developed Countries in the 1980s. UNCTAD is also contributing to specific action related to the particular needs and problems of land-locked and island developing countries. In respect of the land-locked countries, the first session of the Conference in 1964 paved the way for the establishment of a Convention on Transit Trade of Land-Locked States. The Convention, adopted in 1965, entered into force in 1967 (UNTS, Vol. 597, p. 3).

The first in a new series of annual reports was issued in 1981. The Trade and Development Report 1981 and subsequent reports in the series are intended to provide both an integrated review and analysis of world developments and an assessment of their impact on the trade and development of the developing countries.

4. *Special Legal Problems*

As provided in General Assembly Resolution 1995 (XIX), it is a principal function of UNCTAD to initiate action for the negotiation and adoption of multilateral legal instruments in the field of trade. However, unlike, for instance, the → International Labour Organisation, the institutional machinery of UNCTAD does not itself adopt international legal instruments. These instruments are generally established by UN negotiating conferences convened under the auspices of UNCTAD (→ Congresses and Conferences, International). The legally binding ones among these instruments follow the general practice of treaty-making.

However, when UNCTAD adopted the Generalized System of Preferences, the scheme could not be implemented by those UNCTAD members which are members of GATT without an amendment of one of the keystones of the GATT Agreement, namely the → most-favoured-nation clause. A → waiver allowing the industrialized members of GATT to introduce generalized non-discriminatory tariff treatment for products originating in the developing countries was approved by GATT members in June 1971. Subsequently, on November 28, 1979, the GATT contracting parties adopted the decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, also known as the "Enabling Clause". This decision provided, *inter alia*, a specific legal basis for the extension of the GSP beyond the initial ten-year period covered by the waiver.

5. *Evaluation*

UNCTAD has played a large part in developing certain new principles and rules to govern international trade and economic relations as a whole,

taking into account the particular needs of the developing countries. The adoption of the General and Special Principles at the first session of the Conference in 1964, and of the → Charter of Economic Rights and Duties of States in 1974 by the UN General Assembly (Res. 3281 (XXIX)), represented important achievements in the development of international economic relations.

The multilateral instruments negotiated under UNCTAD's auspices which apply to specific sectors of world economic activity include the UN Convention on a Code of Conduct for Liner Conferences (1974), the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (1980), the UN Convention on International Multimodal Transport (1980), the Agreement establishing the Common Fund for Commodities (1980), and various international agreements on individual commodities.

UNCTAD has also contributed to the elaboration of new UN programmes of action, such as the Programme of Action on the Establishment of a New International Economic Order and the International Development Strategies, designed to promote structural change in the world economy and international cooperation for development in the interests of developed and developing countries alike (→ International Law of Cooperation; → Interdependence).

The very creation of UNCTAD and the deliberations and negotiations that have taken place within it have undeniably influenced thinking and action not only at the international but also at the national level. Many of the national economic policy-makers have, at one time or another, been associated with UNCTAD's activities and have, in different degrees, demonstrated that UNCTAD has left an imprint on them.

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GAMANI COREA

UNITED NATIONS CONFERENCES ON THE LAW OF THE SEA *see* Conferences on the Law of the Sea

UNITED NATIONS DEVELOPMENT PROGRAMME

1. Origins and Purpose

The United Nations Development Programme (UNDP) is a semi-autonomous agency of the → United Nations. It was formed in 1965 by a merger of the United Nations Special Fund (established in 1959) and the United Nations

Expanded Programme for Technical Assistance (dating back to 1949) (UN GA Res. 2029 (XX)). The UNDP headquarters are situated in New York, with 115 field offices in → developing States. The Programme serves as the world's largest channel for funding and coordinating international technical cooperation activities (→ Economic and Technical Aid; → International Law of Development).

Working in conjunction with governments and Specialized Agencies and technical organizations of the UN system, the UNDP draws up country, regional, inter-regional and global programmes and projects and supervises their implementation, monitoring, and evaluation. The major aims of the Programme are to foster sound, sustainable economic growth and improved human well-being by helping developing countries to: (a) locate and assess development resources; (b) activate resources; (c) improve resource utilization; (d) expand and conserve resources; and (e) allocate resources optimally. These aims are pursued through surveys and feasibility studies, vocational and technical training, research in and adaptation of technologies (see also → Technology Transfer), and economic and social planning.

2. Structure, Organization and Financing

Membership in the Programme is coincident with membership in the UN itself and its affiliated organizations. Policy formulation is the responsibility of a Governing Council composed of 48 members elected by the → United Nations Economic and Social Council (ECOSOC) from a roster of candidates representing the various regional groups. Twenty-seven seats are allocated to developing countries, and the 21 remaining seats go to representatives of the economically more advanced nations. The term of membership on the Council is an initial three years with the possibility of re-election. The Governing Council makes decisions on UNDP future action. A vote for a decision on a proposal or motion before the Council can be called by any member of the Council; each member has one vote, and decisions are by a majority of the "members present and voting". Voting is by a show of hands except when a member requests a roll call, in which case each participating member's vote is inserted in the record. A dissenting member may also require that its views be included in the record. In cases where no member requests a vote, the Council may adopt proposals on motions without a vote. In actual practice, with extremely rare exceptions, the Council operates by → consensus, without a vote.

Council decisions are submitted to ECOSOC, which may accept the UNDP programming decisions as presented, or advise changes, make exceptions for certain decisions, or expand upon others. Or, if it feels a particular UNDP decision to be outside of its mandate or own terms of reference, ECOSOC will pass that decision on to an appropriate committee of the General Assembly for action.

Should ECOSOC assess a UNDP decision to be a legislative milestone, it will produce the decision as a resolution. Additionally, those UNDP decisions passed on to the General Assembly may result in resolutions by that body. Since ECOSOC resolutions go before the General Assembly for approval, and since programme or other changes not resulting in resolutions are reviewed and "taken note" of by the General Assembly, it can be said that all UNDP mandates come indirectly (through ECOSOC) or directly from the General Assembly. Hence, while the UNDP is semi-autonomous, its ultimate responsibility is to the General Assembly, which created it and defined its terms of reference. The General Assembly is the body that has the final decision-making powers over all UNDP activities that affect the UN on a broad scale, as well as over budgetary questions, despite the otherwise financial independence of the UNDP.

A UNDP Administrator is appointed by the Secretary-General following consultations with members of the Governing Council; the appointment is subject to confirmation by the General Assembly. The Administrator has the responsibility and full accountability for the management of all aspects of the Programme, as well as the authority to appoint and administer the staff and to frame any staff rules he deems necessary (→ Civil Service, International), in consultation with the → United Nations Secretary-General and consistent with the relevant principles laid down by the → United Nations General Assembly. On-site project supervision is the respon-

sibility of resident representatives, each of whom must have been approved by the government of the country to which he or she has been assigned.

By General Assembly Resolution 2688 (XXV) of December 11, 1970, concerning the capacity of the UN development system, five-year country programmes replaced the previous approach under which projects were approved on a first-come, first-served basis. Objectives included more coherent planning, closer integration of all sources of assistance in the UN system at the country level (Annex to Res. 2688, para. 9) and greater decentralization of responsibility for programming and implementation from headquarters to the country level.

Resolution 2688 called for the country programme, based on national development plans, priorities or objectives, to "be formulated by the Government of the recipient country in co-operation, at an appropriate stage, with representatives of the United Nations system, the latter under the leadership of the resident representative of the Programme. . . ." (Annex, para. 7.) The Governing Council retained overall responsibility as stated in relevant prior resolutions of the General Assembly; and the Administrator, in addition to any responsibilities delegated by the Governing Council, was made fully responsible and accountable to the Council for all phases and aspects of the implementation of the Programme. At the headquarters level, Regional Bureaus were established to provide a direct link between the Administrator and the field. Organizational restructuring at headquarters also included establishing a small long-term planning staff to explore new possibilities for increased effectiveness, to analyze major trends, and to indicate new directions for action.

At the country level, subsequent and continuing restructuring has involved a substantial strengthening of the role of the resident representatives, including a progressive decentralization of authority to the field. The resident representatives are thus vested with full overall responsibility for the programme in the country concerned, acting on behalf of the Administrator for all aspects of the UNDP programme at the country level. In the great majority of instances, the resident representatives have now also been designated by the UN Secretary-General as resident coordinators for all in-country development assistance programmes of the UN system.

Most of the work supported by the UNDP is executed by one or more of 35 international agencies of the UN development system (e.g. → United Nations Industrial Development Organization) in collaboration with the governments concerned (→ International Law of Cooperation).

UNDP activities are primarily financed in two ways. About 58 per cent of the Programme's financial requirements comes from counterpart resources furnished by the recipient countries themselves (used for salaries of local personnel, locally procured supplies and services and other local construction and maintenance costs). The remainder is funded by voluntary contributions from member States of the UN (amounting, for example, between 1972 and 1982, to a total of approximately US $5716 thousand million). To the extent possible, the projects are designed to be self-sustaining after UNDP assistance terminates.

3. Activities

The scope of the UNDP's responsibilities is largely determined by resolutions of the UN General Assembly and/or plans of action drawn up by UN global conferences. The UNDP's activities include: stimulating development investments (UN GA Res. 2090(XX), 1965; → Foreign Investments); scientific and technological development (UN GA Res. 2318(XXII), 1967; UN Conference on Science and Technology, Vienna, Austria, 1979); tax reform (UN GA Res. 2562 (XXIV), 1969; → Taxation, International); fostering and coordinating technical cooperation among developing countries (UN GA Res. 3251 (XXIX), 1974; UN Conference on Technical Co-Operation Among Developing Countries, Buenos Aires, Argentina, 1978); promoting economic cooperation among developing countries (UN GA Res. 3241 (XXIX), 1974); and facilitating objectives of the New → International Economic Order (UN GA Res. 3201 (S-VI), 1974). Others have dealt with such varied development needs and problems as training, public administration, nutrition, → natural resources, marketing of raw materials (→ Commodities, International Regulation of Production

and Trade), → tourism, → ports, drought, desertification (→ Environment, International Protection), and "brain drain", to name but a few.

Specific UNDP programmes and projects are always undertaken at the direct request of the government involved. These range over virtually the entire economic and social spectrum, with specific emphasis on meeting the needs of the poorest, least developed countries and in such crucial fields as integrated rural development, employment, training, new and renewable sources of energy, food production, trade stimulation and health (see also → International Energy Agency; → United Nations Conference on Trade and Development; → World Food Programme (UN/FAO); → World Health Organization).

Other important endeavours centre on the fostering of technical and economic cooperation among developing countries, promoting the objectives of the New International Economic Order, and expanding the involvement of women in development (→ Sex Discrimination).

The UNDP, in addition to its primary functions, also administers a number of related special-purpose funds and organizations. Its field offices also provide advisory, administrative and information services to the entire complex of UN development system agencies and, where requested by the governments concerned, work to coordinate their programmes with bilateral aid.

4. Evaluation

It would appear that in its less than 20 years of existence, the UNDP has played an ever-expanding role in the UN development system and has come to take on increasing importance and responsibility for administering development funds and for representing the UN throughout the developing world.

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UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL

1. Historical Background

Provisions for an Economic and Social Council (ECOSOC) appeared in the → Dumbarton Oaks Proposals in 1944. The Proposals contemplated that ECOSOC would make recommendations concerning economic, social and other humanitarian matters, carry out → United Nations General Assembly recommendations on such matters, and coordinate the activities of agencies related to the → United Nations (→ United Nations, Specialized Agencies).

These functions were confirmed at the San Francisco Conference in 1945, with some additions and modifications. From a legal standpoint, the most significant additions at San Francisco were in the strengthening of ECOSOC's role in protecting → human rights, authorizing it to prepare draft conventions (→ Treaties), and empowering it to call international conferences on matters within its competence.

ECOSOC originally had 18 members (→ United Nations Charter, Art. 61). By an amendment which entered into force in 1965, this was increased to 27, and by an amendment in 1973, to 54 members.

2. Structure

Although the Charter does not specify the composition of ECOSOC's membership, the 54 members are elected by the General Assembly in such a way as to reflect an equitable geographical distribution. Of the five permanent members of the → United Nations Security Council, France, the Soviet Union, the United Kingdom and the United States have been elected as members to ECOSOC since its outset, and

China has been elected since 1972. Eighteen members are elected each year for three-year terms, and the same members may stand for re-election.

Each member has one representative and one vote. Decisions are made by a majority of the members present and voting (→ Voting Rules in International Conferences and Organizations). On some occasions this voting procedure has resulted in the adoption of resolutions on economic issues over the opposition of members whose cooperation was essential if the resolutions were to be effective (→ International Organizations, Resolutions; → International Economic Order). To try to remedy this problem, a Group of Experts recommended in 1975 that ECOSOC adopt new procedures to appoint small consultative groups that would seek → consensus on potentially divisive issues. Although ECOSOC could vote on such a matter without waiting for a consultative group's report, it would do so only after taking account of the group's progress (see UN Doc. E/AC.62/9 (1975)). ECOSOC has not adopted these recommendations.

ECOSOC maintains an array of subsidiary bodies through which much of its work is done. As of 1982, ECOSOC had six standing committees: the Committee for Programme and Coordination, the Commission on Human Settlements (→ United Nations Commission on Human Settlements), the Committee on Non-Governmental Organizations, the Committee on Natural Resources (→ Natural Resources, Sovereignty over), the Commission on Transnational Corporations (→ Transnational Enterprises), and the Committee on Negotiations with Intergovernmental Agencies. There are two standing expert bodies – the Committee for Development Planning and the Committee on Crime Prevention and Control (→ Criminal Law, International) – in addition to various *ad hoc* groups of experts. Six functional commissions were active as of 1982: the Statistical Commission, the Population Commission, the Commission for Social Development, the Commission on Human Rights, the Commission on the Status of Women, and the Commission on Narcotic Drugs (→ Drug Control, International). Two of the functional commissions had subcommissions. There were five regional commissions (→ United Nations, Economic Commissions), one for Asia and the Pacific and one each for Europe, Latin America, Africa and Western Asia. Finally, there were the following related bodies: the → United Nations Children's Fund, the United Nations High Commissioner on Refugees (→ Refugees, United Nations High Commissioner), the → United Nations Development Programme, the Committee on Food Aid Policies and Programmes, and the International Narcotics Control Board.

Pursuant to Art. 63 of the UN Charter, ECOSOC has entered into relationship agreements with the Specialized Agencies. These agreements establish a framework for coordination of activities between the UN and each Specialized Agency. The agreements do this primarily through provisions for reciprocal representation at meetings, reciprocal rights to propose agenda items, exchange of information and documents, and consideration by the agency of UN recommendations. The Specialized Agencies report annually to ECOSOC.

A great many non-governmental organizations have consultative status (→ Consultation) with ECOSOC, permitting them to be heard regarding their fields of interest. They are divided into three categories: Category I, comprising those few with a basic interest in most of ECOSOC's activities; Category II, comprising a larger number having special competence in a few of ECOSOC's activities; and a much larger "Roster" of those eligible for *ad hoc* consultations on relatively narrow issues of special concern to them.

ECOSOC is financed out of the regular budget of the UN. Recently it has held a short organizational session each February, a first regular session in April/May, a second regular session in July, and a brief resumed session during the General Assembly's session in autumn.

3. Activities

ECOSOC's principal activities relating to international law have been in the fields of human rights, criminal justice, narcotics control, economic development and population.

ECOSOC's direct involvement in human rights has been primarily in connection with the International Covenant on Economic, Social and Cultural Rights of December 16, 1966 and with individual petitions submitted to the UN

(→ Human Rights Covenants; for the activities of the Commission on Human Rights and of other bodies, see → Human Rights, Activities of Universal Organizations and → International Covenant on Civil and Political Rights, Human Rights Committee).

The Covenant on Economic, Social and Cultural Rights requires States parties to submit reports to ECOSOC, in stages, on their progress in observing the rights it covers. At each stage a sessional Working Group of ECOSOC considers reports dealing with the rights covered by designated articles of the Covenant, beginning with Arts. 6 to 9, then 10 to 12 and finally 13 to 15. When a State's written report is being considered, that State's representative makes an oral presentation to the Working Group and answers questions from members of the Group. Representatives of interested Specialized Agencies make general statements on each report. The reporting State's representative then has an opportunity to reply. The Working Group reports to ECOSOC, which may make recommendations "of a general nature" to the General Assembly.

ECOSOC has long had the problem of deciding what to do with the thousands of petitions the UN receives each year from individuals alleging human rights violations (see also → Discrimination against Individuals and Groups). Until 1967, ECOSOC declined to act on such petitions. In 1967, however, ECOSOC authorized the Commission on Human Rights and its Sub-Commission to examine information relating to gross human rights violations (UN ECOSOC Res. 1235 (XLII) of June 6, 1967). In 1970 ECOSOC established a formal procedure by which the Sub-Commission annually considers, in private, individual communications which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms (UN ECOSOC Res. 1503 (XLVIII) of May 27, 1970). Each year the Sub-Commission finds that a few of these communications are deserving of further consideration and refers them to the Commission, which examines them in confidence. In appropriate cases, the Commission may make recommendations to ECOSOC. As of 1982 it had done this in only one case, involving religious freedom in Malawi (→ Racial and Religious Discrimination), although it had also made public one other case (involving Equatorial Guinea). ECOSOC adopted a resolution regretting the Malawi Government's failure to cooperate and expressing the hope that the situation had been corrected (UN ECOSOC Res. 1980/31 of May 2, 1980).

ECOSOC's Commission on the Status of Women has proposed or adopted several measures to eliminate discrimination against women (→ Sex Discrimination). Chief among these are the Convention on the Political Rights of Women, 1952 (UNTS, Vol. 193, p. 135), which has been widely ratified, and the more recent Convention on the Elimination of All Forms of Discrimination Against Women, UN GA Res. 34/180, Annex, of December 18, 1979.

In the field of criminal justice, ECOSOC has adopted the Standard Minimum Rules for the Treatment of Prisoners (UN ECOSOC Res. 663 C (XXIV) of July 31, 1957), setting forth guidelines for national legislation on the treatment of prisoners. ECOSOC later extended the Standard Minimum Rules to apply also to persons arrested or imprisoned without charge (UN ECOSOC Res. 2076 (LXII) of May 13, 1977).

ECOSOC's Committee on Crime Prevention and Control orchestrates international activities relating to criminal justice and crime prevention. Amongst other things, it implements the recommendations of the UN Congress on the Prevention of Crime and the Treatment of Offenders, which meets every five years. The Standard Minimum Rules grew out of such a Congress. So did the Code of Conduct for Law Enforcement Officials (UN GA Res. 34/169, Annex, of December 17, 1979), which began as a draft prepared by the Committee on Crime Prevention and Control.

ECOSOC, acting through its Commission on Narcotic Drugs, has had a major hand in drafting and implementing the Single Convention on Narcotic Drugs, 1961 (UNTS, Vol. 520, p. 204), its 1972 Protocol (UST, Vol. 26, p. 1439), and the 1971 Convention on Psychotropic Substances (ILM, Vol. 10 (1971) p. 261). ECOSOC and its Commission have quasi-legislative powers under the two Conventions (→ International Legislation). The Commission may add and delete substances controlled by the Conventions' schedules, and may transfer substances from one schedule to

another, subject to a limited power of avoidance by parties under the 1971 Convention; and ECOSOC may confirm, alter or reverse the Commission's decision under either Convention upon request of a party.

ECOSOC is only one of many UN organs and related agencies active in economic development matters (→ General Agreement on Tariffs and Trade; → International Bank for Reconstruction and Development; → International Development Association; → International Finance Corporation; → International Fund for Agricultural Development; → United Nations, Economic Commissions; → United Nations Conference on Trade and Development; → United Nations Development Programme. See generally → Economic Law, International.) Some of these organs submit annual reports to ECOSOC.

In the economic development field, ECOSOC focuses on development planning, the use of science and technology for development (though ECOSOC no longer has its own Committee on Science and Technology for Development), and the role of transnational corporations in → developing States.

From an international law perspective, the focus on transnational corporations is the most important of these activities. The Commission on Transnational Corporations' inter-governmental working group in 1977 began to draft a Code of Conduct for Transnational Corporations (→ Codes of Conduct), to define the respective responsibilities of the transnationals and of host governments. On a related matter, ECOSOC's *ad hoc* Committee on an International Agreement on Illicit Payments has prepared a Draft International Agreement on Illicit Payments (UN Doc. E/1979/104 (1979)). ECOSOC has formally disapproved of the activities of transnational corporations in South Africa (in the context of that State's policy of → apartheid) and → Namibia (UN ECOSOC Res. 1980/59 of July 24, 1980).

ECOSOC's Population Commission served as the preparatory body for the World Population Conference, held in 1974. The Conference produced the World Population Plan of Action and a series of recommendations on population goals and policies (UN Doc. E/CONF.60/19 (1974)).

ECOSOC is active in a number of other fields, including natural resources, environment (→ United Nations Environment Programme; → Environment, International Protection), energy, human settlements and public administration. For example, its Committee on Natural Resources acted as the preparatory committee for the 1977 UN Water Conference, which produced normative recommendations in the Mar del Plata Action Plan (UN Doc. E/CONF.70/29 (1977); → Water, International Regulation of the Use of). ECOSOC is charged with implementing the Plan.

Finally, ECOSOC generally oversees cooperation and coordination within the UN system.

4. Evaluation

ECOSOC has never satisfied the hopes of those at the San Francisco Conference who saw it as the primary policy-making body for international economic and social cooperation. In part, this reflects the changes in the world since 1945. As "economic and social" issues (virtually everything not directly associated with keeping the peace) have grown infinitely more complex than they were at the end of World War II, the body designed to deal with them has had to spread its resources thinly. Moreover, it has had to share authority with other bodies, such as the General Assembly, UNCTAD and several Specialized Agencies. Its relationship with some of these bodies has not always been trouble-free.

In part, ECOSOC's weakness stems from structural factors. It does not have formal power to make binding decisions, except as to internal matters (for example, Res. 1503, *supra*; → International Organizations, Internal Law and Rules). It is not financially independent of the General Assembly. In addition, its size is a problem. Its 54 members make it too large to be an efficient policy-making body, and too small to have the *de facto* authority that the General Assembly can attain when it achieves consensus.

Despite its obvious shortcomings, ECOSOC can point to some substantial achievements. In particular, ECOSOC and its Commission on Human Rights have played important roles in the development of international human rights, including standards for criminal justice, in the face of often-conflicting value systems that have been

difficult to accommodate. The basic international legislation on narcotics control emanates from ECOSOC. It can point to tangible results in other fields as well.

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UNITED NATIONS, ECONOMIC COMMISSIONS *see* Regional Commissions of the United Nations

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. Origins and Establishment

The United Nations Educational, Scientific and Cultural Organization grew out of the desire of the World War II Allied Powers to create conditions of international cooperation, education and understanding in which the tragedy of the then recent war would not be repeated. Its roots reach back to → cultural and intellectual cooperation efforts begun under the → League of Nations and the → International Bureau of Education, but UNESCO goes far beyond pre-war agencies both in the scope of its activities and in the explicit connection drawn between international educational, scientific and cultural cooperation and world peace (→ Peace, Means to Safeguard).

The UNESCO Constitution, adopted at London on November 16, 1945 (UNTS, Vol. 4, p. 275), begins with what has become an oft-quoted proposition: "... since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed". The Constitution attributes "suspicion and mistrust between the peoples of the world" to "ignorance of each other's ways and lives", and defines the "purpose" of UNESCO as being to:

> "contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for... human rights and fundamental freedoms...." (Art. I(1)).

In pursuit of UNESCO's purpose, the organization is specifically directed to advance knowledge through mass communication, to give "fresh impulse to popular education", and to "maintain, increase and diffuse knowledge". The London Conference thus moved considerably beyond the relatively narrow charge given pre-war intellectual cooperation agencies, but failed to specify clearly either how UNESCO should establish priorities within its broad field of action or what the outer limits of that field might be. The UNESCO Constitution, having been drafted against the background of the pre-war Paris-based Institut international de coopération intellectuelle (IICI), was, moreover, susceptible to a broad range of interpretations. It fell to the British scientist Julian Huxley, UNESCO's first Director-General, and to the inaugural 1946 session of the General Conference, to give specific form to the general purpose and functions stated in the UNESCO Constitution.

Huxley, who was head of the UNESCO Preparatory Commission, expressed UNESCO's role in the broadest possible terms. UNESCO, he said, "must serve the ends and objects of the United Nations, which in the long perspective are world ends, ends for humanity as a whole". UNESCO must also "promote all aspects of education, science, and culture, in the widest sense of those words". Huxley's expansive concepts, while not explicitly embraced by UNESCO member governments, provided the motive force for the rapid and often uncoordinated proliferation of UNESCO programmes across what seemed an endless spectrum of human concerns. Later developments under Huxley's successors, Jaime Torres Bodet of Mexico and Luther Evans of the

United States, concentrated UNESCO's programme activities under broad themes emphasizing education, mass media and the development of international understanding, without derogating from UNESCO's basic and broadly conceived authority to "contribute to peace and security by promoting collaboration among the nations through education, science and culture".

2. Structure and Membership

Like other major → United Nations Specialized Agencies, UNESCO has two chief organs composed of representatives of member States: the General Conference and the Executive Board.

All members are represented in the UNESCO General Conference, which determines the policies and the main lines of work of the organization. Acting under this mandate, the General Conference adopts the UNESCO programme and budget, establishing UNESCO priorities, raising funds by assessment of member States (→ International Organizations, Financing and Budgeting), and allocating those resources among programmes developed by the UNESCO Secretariat and reviewed by the Executive Board. The General Conference, which originally met annually and then biennially, now meets every three years, normally at the organization's Paris headquarters.

The Executive Board consists of 45 members elected by the General Conference from among the Conference delegates appointed by member States. The Board prepares the agenda for the General Conference and is responsible for the execution of the programme adopted by the General Conference (Constitution, Art. V.B.5).

The Constitution provides that Executive Board members include "persons competent in the arts, the humanities, the sciences, education and the diffusion of ideas", selected to reflect "the diversity of cultures and a balanced geographical distribution" (Constitution, Art. V.A.2). Executive Board members originally served as individuals, directed to act "on behalf of the Conference as a whole and not as representatives of their respective Governments"(see original text of Art. V.11). The Constitution was amended in 1954 to provide that each Executive Board member "shall represent the Government of the State of which he is a national", but that Executive Board members nevertheless "shall exercise the powers delegated to them by the General Conference on behalf of the Conference as a whole" (see Constitution, Art. V.A.1 and 12, as amended, UNTS, Vol. 575, p. 270). In practice, however, Executive Board members espouse the views of their governments whether or not the Board is carrying out a function explicitly delegated to it by the General Conference.

There are no permanent members of the Executive Board; members are elected for six-year terms and are not immediately eligible for re-election. When a delegate's term expires, another delegate of the same member State may be elected to the Board, however, with the result that the major powers (the United Kingdom, France, the Soviet Union and the United States, and, since 1972, the People's Republic of China), have been continuously represented on the Executive Board.

The Constitution provides that membership in the → United Nations "shall carry with it the right to membership" of UNESCO (Art. II.1). In addition, States that are not members of the UN may be admitted to membership of UNESCO by two-thirds majority vote of the General Conference upon the recommendation of the Executive Board (Art. II.2). One hundred and fifty-five States were members of UNESCO in 1982.

UNESCO is established under its Constitution as an independent inter-governmental organization having its own membership, policy-making organs and executive and administrative structure. The Constitution also provides that UNESCO shall function as a UN Specialized Agency under an agreement concluded with the UN which "shall provide for effective cooperation between the two Organizations in the pursuit of their common purposes, and at the same time shall recognize the autonomy [of UNESCO], within the fields of its competence as defined in this Constitution" (Art. X). The relationship agreement, concluded in December 1946, recognizes UNESCO's functions in the fields of education, science and culture, and provides for the coordination of its activities with those of the UN (UNTS, Vol. 1, p. 233). Recognizing the autonomy of UNESCO, the agreement does not establish direct controls by the UN over UNESCO; coordination is achieved through review of UNESCO activities in UN organs, and through

recommendations addressed by UN organs to the Specialized Agencies as a whole.

3. International Law in UNESCO Practice

International law provides an important dimension of UNESCO practice in a dual sense: As a Specialized Agency, UNESCO acts in accordance with its Constitution and the legal rules of the UN system; second, the Constitution's explicit reference to "universal respect for justice, for the rule of law and for .. human rights and fundamental freedoms" gives UNESCO pre-eminent concern with the evolving international law framework needed for peace and security. This section comments briefly upon important international law issues arising in UNESCO practice.

(a) UNESCO conventions and recommendations

The General Conference has power, under Art. IV.4 of the Constitution, to adopt conventions and recommendations on subjects within UNESCO's broad terms of reference. Members are required to submit conventions and recommendations to their "competent authorities", meaning the authorities empowered "to enact the laws, issue the regulations or take any other measures necessary to give effect to conventions or regulations" (UNESCO, Records of the General Conference, 12th Session 1962, Resolutions, p. 252; → International Legislation). They are further required to report to UNESCO on the action taken to give effect to conventions and recommendations (Constitution, Art. VIII). Under the Rules of Procedure adopted by the Conference, members' reports on UNESCO conventions and recommendations are reviewed by the General Conference, which may adopt "general reports" commenting on implementation action taken by member States (→ Reporting Obligations in International Relations). The most frequent comment made has been that too few UNESCO members comply with the reporting obligation: Generally speaking, less than 20 per cent of the required reports have been received in time for consideration at recent sessions of the General Conference.

UNESCO conventions and recommendations have covered subjects ranging from copyright (→ Literary and Artistic Works, International Protection; → World Intellectual Property Organization) and discrimination in education (see *infra*) to the protection of → cultural property (see also → Cultural Property, Protection in Armed Conflict and → Maritime Archaeology), and the standardization of various categories of educational and scientific statistics. While standard-setting has thus been a major part of UNESCO's activities, it has generally proceeded without controversy, giving rise to a substantial body of law and practice. These have been flawed only by the continued reluctance of member States to report on actions taken in response to UNESCO conventions and recommendations.

(b) The "politicization" of UNESCO

As a UN Specialized Agency, UNESCO is often regarded as a functional agency, whose domain extends to technical but not to political issues, or at least not to the kind of political issues that surfaced in the UNESCO General Conference during the 1970s. Centring on issues relating to → Israel, it has been alleged that the General Conference has become "politicized" in three respects: First, certain decisions have been taken to express political opposition to Israel, rather than as objective determinations on questions within UNESCO competence. Second, certain decisions have been taken in disregard of the facts, or without adequate development in the General Conference or the Executive Board of the relevant facts. Third, in addition to alleged political motivation, certain decisions are alleged to lie outside of the competence of UNESCO as defined in the Constitution.

"Politicization" charges are difficult to assess when founded upon essentially subjective characterizations of motive, and are even more difficult to assess when made in relation to definitions of competence as broad as those contained in the Constitution. In principle it is clear that UNESCO's legal competence is confined to "education, science and culture", and that UNESCO decisions should satisfy high standards of accuracy, fairness and due process, reflecting objective, non-partisan determinations on matters falling within UNESCO's competence.

Three decisions of the 1974 session of the

UNESCO General Conference were charged with having been "politicized". First, the Conference voted to withhold UNESCO aid until Israel complied with earlier General Conference and Executive Board decisions relating to the protection of cultural property and to archaeological excavations in Jerusalem, a → sanction for which there is no provision in the Constitution. Second, the Conference rejected Israel's request for admission to the UNESCO European Regional Group, although this decision excluded Israel from participation in UNESCO regional activities. Third, the Conference voted to authorize the Director-General to "exercise full supervision of educational institutions" in territories occupied by Israel, although reports of UNESCO missions to the area had not shown deprivations of educational or cultural rights in the occupied territories (→ Israeli-Occupied Territories).

The 1974 General Conference decisions led the United States Congress to vote to withhold funds for contributions to UNESCO until the United States President certified that UNESCO had adopted policies fully consistent with its educational, scientific and cultural objectives, and had taken "concrete steps to correct its recent actions of a primarily political character" (Pub.L. 93–559, sec. 9(h) (1974), repealed by Pub.L. 95–424, sec. 604 (1978)). The required certification was made by President Carter in December 1976 following the Nairobi session of the General Conference, at which discussions of politically sensitive issues were held behind closed doors in a 25-member Drafting and Negotiation Group. The new Conference machinery, established on the initiative of UNESCO Director-General Amadou M'Bow of Senegal, effectively minimized Conference debate on issues of the type presented in 1974, and aided the Conference in reaching a → consensus on many such issues, confining Conference action to measures broadly viewed as falling within the competence of UNESCO.

(c) *Human rights*

Many UNESCO conventions and recommendations, discussed generally above, protect → human rights in education, science and culture, directly or indirectly. This section comments briefly on two major UNESCO measures: the Convention and Recommendation against Discrimination in Education (UNTS, Vol. 429, p. 93), both adopted in 1960, and the "communications" procedure established by the Executive Board in 1978.

The 1960 Convention against Discrimination in Education bars discrimination in the broadest terms, whether based on "race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth" (→ Racial and Religious Discrimination; → Sex Discrimination; → Discrimination against Individuals and Groups). The Convention further provides that education shall foster "full development of the human personality" and promote "understanding, tolerance and friendship among all nations [and] racial or religious groups" (Arts. 1(1) and 5(1) (a)). The provisions of the Convention are duplicated in a Recommendation also adopted in 1960, thus applying these provisions to all UNESCO members whether or not they ratify the Convention. The Convention is supplemented by a 1962 Protocol Instituting a Conciliation and Good Offices Commission to seek settlement of disputes arising between parties to the Convention (UNTS, Vol. 651, p. 363: → Conciliation and Mediation; → Good Offices). Although the Convention and Recommendation establish a plain and comprehensive norm against discrimination, they provide no effective enforcement: The Conciliation Protocol applies only to disputes between States and has not been widely ratified, and, as observed above, the General Conference reporting procedure has not had a good record of compliance.

Measures were taken in 1978 to remedy this situation through establishment of a "communications" procedure under which individuals may bring to the attention of the Executive Board complaints charging deprivations of human rights falling within UNESCO's competence in the fields of education, science, culture and information (Executive Board Decision 3.3, UNESCO Doc. 104 Ex/Decisions, p. 12, para. 14(a) (iii)). The new procedure rests upon definitions of human rights adopted by UNESCO and the UN, including rights defined in the Universal Declaration of Human Rights (→ Human Rights, Universal Declaration) and the International Covenants on Civil and Political and on Economic. Social and Cultural Rights (→ Human Rights Covenants).

It is open to any victim and to complaints raised against any UNESCO member whether or not that member has ratified the instrument in which the right is defined (cf. → International Covenant on Civil and Political Rights, Human Rights Committee). When found admissible, complaints are considered in closed sessions of the Executive Board Committee on Conventions and Recommendations, which will endeavour to "bring about a friendly solution designed to advance the promotion of the human rights falling within UNESCO's fields of competence" (Executive Board Decision 3.3, para. 14(k)).

It remains to be seen whether the UNESCO complaints procedure will be widely used or will prove capable of effective protection of human rights. The procedure is a marked advance in two respects, however. First, it affirms a broad competence in UNESCO to act to protect rather than merely to promote human rights. Second, it acknowledges the potential law-creating effect of human rights standards enunciated both by UNESCO and by the UN, for these are the standards that will be invoked before the UNESCO Committee (→ Human Rights, Activities of Universal Organizations).

(*d*) *New world information order*

Information and mass communications have always been prominent in UNESCO's work programme, leading in recent years to intense controversy and charges of "politicization". In 1978, the General Conference adopted a Declaration on the Mass Media with the unwieldy title "Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War" (→ Apartheid).

As is perhaps apparent from its title, the Mass Media Declaration was less suited to reinforcing traditional UNESCO principles of freedom of information than it was to introducing elements of government control of the media. An example was the Soviet proposal to include in the Declaration the proposition that "States are responsible for the activities in the international sphere of all mass media under their jurisdiction". The compromise draft adopted by the General Conference excluded the Soviet proposal, but called for "a free flow and wider and more balanced dissemination of information", and for development of "conditions for the protection... of journalists" (Records of the General Conference, 20th Session, 1978, Resolutions, Res. 4/9.3/2, Art. IX). Both the "more balanced" and the "free flow" of information should be subsumed in a "new, more just and more effective world information and communication order" (preamble to the Declaration), but without codes of ethics and licencing of journalists that point towards restricting the free flow of information (→ Communication and Information, Freedom of).

Human rights concepts are invoked on both sides of the "free and balanced flow" controversy and might provide the basis for consensus supporting a new world information order. The UNESCO Commission that studied the issue, headed by Sean MacBride, suggested a "right to communicate" building on ideas contained in the Universal Declaration of Human Rights. The MacBride Commission formulated the following broad communication rights:

> "(a) a right to assemble, a right to discuss, a right to participate and related association rights;
>
> (b) a right to inquire, a right to be informed, a right to inform, and related information rights; [and]
>
> (c) a right to culture, a right to choose, a right to privacy, and related human development rights." (UNESCO, International Commission for the Study of Communication Problems, "Many Voices, One World" (1980) pp. 191–193).

So conceived, the right to communicate provides essential underpinnings for the new world information order and should bring "free flow" into proper accommodation with "balanced flow" as compatible elements of the same structure.

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UNITED NATIONS ENVIRONMENT PROGRAMME

1. Historical Background and Establishment

In response to mounting public concern over deterioration of the environment, the first United Nations Conference on the Human Environment was convened in June 1972. Delegates from 113 nations met at Stockholm, and produced an "action plan" of 109 separate recommendations. They also made a declaration of 26 "common principles " on man's rights and responsibilities in respect of the global environment (UN Doc. A/CONF.48/14). The declaration was a consensus summary of anxieties expressed in a series of conference papers prepared by the agencies of the → United Nations, governments and a host of private individuals and non-governmental agencies, such as the International Union for Conservation of Nature and Natural Resources.

The Stockholm conference recommended that the UN as a whole should give special attention to the concerns expressed in the "action plan" which were grouped into six subject areas: human settlements, human health, environment and development, natural disasters, oceans and terrestrial ecosystems. Following a report presented by the → United Nations Secretary-General (UN Doc. A/8783), the recommendation was then considered by the → United Nations General Assembly at its 27th Session which approved Resolution 2997 (XXVII), setting out the institutional and financial arrangements for launching the United Nations Environment Programme (UNEP).

By January 1973, UNEP was in operation, working from headquarters first in Geneva and then in Nairobi, Kenya. It was an innovative body of the UN in terms of its operational concept and organizational structure.

The idea for the programme derived from two main considerations: Firstly, no single agency or fund of the UN could reasonably be applied to the immense, complex, and wide-ranging problems of the environment. It was clear that a "world community" approach was required, with nations working to solve the problems both individually and collectively in regional groupings, and with new and existing alliances for international cooperation. Secondly, no significant change in human behaviour and attitudes towards the environment could be imposed from above by any world authority. The change would have to come from the people themselves. These considerations explain why UNEP did not become a new → United Nations Specialized Agency. It is a relatively small subsidiary organ, whose main responsibility is to complement and coordinate the actions developed within the different institutions of the UN family. UNEP exists, it might be said, as a catalyst within the system.

2. Structure; Decision-Making; Finances

Three main organs were established by Resolution 2997: the Governing Council, the Secretariat, and the Environment Fund. The UN General Assembly, through the → United Nations Economic and Social Council, is the ultimate authority for the Programme.

(*a*) *Governing Council*

The Governing Council is composed of 58 member States, elected by the UN General Assembly for three-year terms on the following basis: sixteen seats for African States; thirteen seats for Asian States; six seats for Eastern European States; ten seats for Latin American States and thirteen seats for Western European and other States. Its main responsibilities are to promote international cooperation in the field of the environment and to recommend policies to this end; and to provide general policy guidance for the direction and coordination of environmental programmes within the UN system (→ Environment, International Protection). The Governing Council is the main organ of the Programme, in that it reviews and approves annually the programme for the utilization of the Environment Fund's resources. It receives and reviews the periodic reports of the Executive Director of UNEP and itself reports annually to the General Assembly through the Economic and Social Council.

(*b*) *Environment Secretariat*

The Environment Secretariat was established, under the terms of Resolution 2997, "to serve as a focal point for environmental action and co-ordination within the United Nations system in such a way as to ensure a high degree of effective management". It is headed by an executive director elected by the General Assembly. On its own initiative or upon request, the Secretariat submits proposals embodying medium-range and long-range planning for UN programmes in the field of the environment to the Governing Council. The headquarters of the Secretariat are situated in Nairobi, with regional and liaison offices in New York, Geneva, Bangkok, Beirut and Mexico City. Furthermore, several operational units are decentralized, such as the Centre of Activities for Regional Seas in Geneva, and the Office for Industry and the Environment in Paris.

(*c*) *Environment Fund*

The Environment Fund is supported by voluntary contributions. The Fund wholly or partly finances the costs of the initiatives undertaken within the UN system, as well as programmes of general interest such as regional and global monitoring, assessment and data-collecting systems, and environmental research and studies. Along those lines, the Fund can also contribute to activities developed within other international inter-governmental or → non-governmental organizations.

(*d*) *Coordinating bodies*

Another organ created by Resolution 2997 was the Environment Co-ordination Board, whose function was clearly enough indicated by its name. But after several years of activity, this body was replaced by the UN Administrative Committee on Co-ordination (ACC), which is in charge of the general coordination of activities within the UN system.

(*e*) *Programming process*

The method utilized by UNEP to tackle the various elements of its programme of action is called the "programming process". It has been systematized to deal with the different concerns expressed in Stockholm. In practice, UNEP examines each outstanding question to determine the kind of action to be taken, and to identify the responsible bodies. For those purposes, it formulates recommendations which may eventually be adopted by the Environment Fund.

This "programming process" involves three levels: Level One involves furnishing information on environmental problems (e.g. → Air Polution; → Water Pollution) and on efforts undertaken to provide the appropriate solutions to them. Each year, the Governing Council selects specific subjects on which a special report on the "state of the environment" is presented to the Council at its next session. Level Two involves defining goals and strategies and formulating special actions requiring development. A programme for the environment is presented to the world community: to governments, inter-governmental and non-governmental institutions, and other interested groups. At Level Three, identified activities from Level Two are chosen to receive the help delivered by the Fund. In this respect, priority is given to actions whose effects tend to facilitate coordination.

3. Activities

To quote the UNEP publication, "UNEP, What It Is, What It Does, How It Works", "anyone who expected that UNEP would itself solve all the problems of the environment, or fund others for the job, was bound to be disappointed. The brief is not more than to jog the world into action; to set the world working for itself". In other words, the task of the Programme is to coordinate and to promote actions undertaken by other national or international bodies, rather than to initiate concrete operations by itself. In this brief presentation of UNEP's work to date, it is necessary to distinguish on the one hand various types of actions carried out under broad subject areas, and on the other the initiatives relating to environmental management, and more specifically, dealing with environmental law, on both the national and international levels.

(*a*) *Particular subject areas*

One may first consider the different types of actions referred to in the above presentation of Level Three (i.e. actions having been wholly or partly financed by the Environment Fund). This is the case for the Global Environmental Monitoring System (GEMS), which works with other UN organizations on surveillance activities, particularly in the field of pollution and health, climate, and renewable natural resources. GEMS aims to standardize the collection, analysis and dissemination of environmental data produced by national and international institutions from ground observation, ships, aircraft and satellites (→ Satellites in Space; → Inmarsat; → Intelsat).

Infoterra is a world-wide network which assists organizations and individuals in locating sources of technical, scientific and decision-oriented information on the environment. It operates as a decentralized network incorporating existing national and international services and systems.

The International Register of Potentially Toxic Chemicals (IRPTC) is a third major UNEP information service relating to about 45 000 known chemicals in use in the world and the introduction of another 1000 or so every year. The key operations are data retrieval, analysis, and evaluation of chemicals for regular publication in the IRPTC bulletin and elsewhere.

Various assessment studies related to certain natural resources and ecosystems, the climate, the atmosphere and the ozone layer are made. A Data Unit compiles facts and figures in a continuous assessment of the "quality of life" and, using an established data base, makes presentations of environmental trends and technical developments.

UNEP deals specifically with the environmental aspects of various subject areas which have been examined for several years by various other international institutions, particularly within the UN system, some of which have formed the subject of special UN world conferences, such as those on human settlements (Vancouver, 1976; → United Nations Commission on Human Settlements) and desertification (Nairobi, 1977). It works together with the → World Health Organization in the field of environmental health: Among target areas are malnutrition, malaria, schistosomiasis and a host of infectious diseases related to environmental pollution and contamination.

For the study and protection of terrestrial ecosystems and the conservation of wildlife and protected areas, the Programme has, mainly with the International Union for Conservation of Nature and Natural Resources (IUCN) and the World Wildlife Fund (WWF), developed a World Conservation Strategy. Its aim is to safeguard genetic diversity in species of crops, animals, and fish (→ Plant Protection, International; → Wildlife Protection).

UNEP devotes itself to a number of urgent problems of interest to both industrial and → developing States, such as reviewing the environmental impact of the production, transport, processing and use of various sources of energy (e.g. → Nuclear Energy, Peaceful Use; → Transfrontier Pollution). In the course of its Programme on Industry and the Environment, advice to governments is provided on planning, siting, construction and operational control. One of its other objectives in a related context is to promote consideration of the environment in the overall development process (cf. also → United Nations Development Programme), in order to reconcile environment and development needs (→ International Law of Development).

Finally, without claiming to present a complete overview of UNEP's activities, one must recall its task in relation to ocean pollution (→ Marine

Environment, Protection and Preservation; → Marine Resources). Having developed together with the → Food and Agriculture Organization of the United Nations a successful undertaking with the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (ILM, Vol. 15 (1956) p. 290), UNEP is currently expanding its Regional Seas Programme into other areas, e.g. the Gulf of Guinea.

It is also necessary to indicate the important efforts being made in the areas of education, training and technical assistance (see also → United Nations Institute for Training and Research). An Education Unit produces instructional materials and ensures that a training component is included in all UNEP-promoted activities. It provides technical assistance on a regional basis through the Regional Advisory Services established in each region. UNEP assists in developing techniques and tools for incorporating consideration of the environment in general into development programmes and into social and economic decision-making. The methodologies are tested, improved, and may be applied on projects such as irrigation and high dams (→ Water, International Regulation of the Use of). In this context, environmental management refers to the definitions of environmental norms and guidelines. This in turn leads to the expansion of environmental law, both on the national and the international levels.

(*b*) *Environmental law*

On a national scale, UNEP assists governments, mainly of developing States, to strengthen environmental legislation and law enforcement methods. The various data compiled by UNEP and other UN specialized institutions help in conceiving the new technical legislation formulated by governments in order to promote an efficient protection of the environment.

But special attention must here mainly be given to the efforts realized in the field of international environmental law. The activity of UNEP in the field of treaty-making has been already noted above, with reference to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution. Another convention for cooperation on the protection of the marine environment, concerning the Kuwait region, was adopted in 1978 on the basis of comparable principles (ILM, Vol. 17 (1978) p. 511). Apart from this kind of activity, which, with the agreement of the States concerned, leads to formal legal obligations, UNEP has undertaken efforts aimed at defining various guidelines more precisely in order to give more substantial content to certain of the principles set out in the 1972 Stockholm Declaration. Principles 21 and 22 call specifically for such an elaboration. Principle 22 recommends the States "co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage ...". Examination of the characteristics of such damage can be found in the work of the Inter-Governmental Working Group of Experts on Natural Resources Shared by Two or More States, which was convened by UNEP. Principle 3 (para. 3) of the "Principles of Conduct" issued in 1978 (UNEP/GC.6/17) provides that:

> "it is necessary for each State to avoid to the maximum extent possible and to reduce to the minimum extent possible the adverse environmental effects beyond its jurisdiction of the utilization of a shared natural resource so as to protect the environment, in particular when such utilization might: a) cause damage to the environment which could have repercussions on the utilization of the resource by another sharing State; b) threaten the conservation of a shared renewable resource; c) endanger the health of the population of another State."

Another inter-governmental working group of experts on environmental law has devoted special attention to the same sort of problems. (See articles on → Responsibility of States; → Waste Disposal.)

Other important guidelines on prevention figure in the same "Principles of Conduct" of 1978; they deal mainly with information and prior consultation, non-discrimination between national and foreign victims of transfrontier pollution, as well as an equal right of access for all to the means of protection against pollution-caused damage. This text has been denoted by the UN General Assembly as a reference for all member States (Res. 34/186 of December 18, 1979). Like other projects now in preparation, it constitutes a substantial basis for future action in the field of international environmental law.

Furthermore, UNEP has taken the initiative of proposing an outline of a system-wide medium-term plan for the period 1984–1989. Based on the concerns exhibited in the programmes of the major organizations in the UN system, and in the light of the discussion during thematic joint programming meetings in 1980, UNEP has selected broad objectives and has suggested programmes which could be elaborated and supported system-wide in the field of environmental law.

4. Evaluation

The "System-Wide Medium-Term Environment Programme" (UNEP/GC.10/7) has been established to cover all activities in the field of environmental protection. Ten years after UNEP's creation, this programme appears as a basis for a new development of UNEP's coordinating activities. Structures and programmes founded and defined during the first decade, such as Infoterra, GEMS and IRPTC are now becoming operational, and reasonable optimism can be maintained with regard to the future. UNEP can be considered as having found its place within the UN institutional system. It has succeeded in becoming an important interlocutor not only for other UN bodies encountering environment problems, but also for governments and other institutions, particularly at the regional level.

One must equally underline the links which actually exist between UNEP and a number of non-governmental agencies dealing with the same areas. For instance, since 1975, it has cooperated with the Scientific Committee for the Protection of the Environment of the International Council of Scientific Unions (CIUS/SCOPE), and with the International Commission for Radiation Protection (ICRP; → Nuclear Research).

Ultimately, the success or failure of UNEP depends on how governments and people view their rights and duties in the use of the earth's resources. One of the major responsibilities of this organization is to convince States and individuals not to repeat the mistakes of the past but to try to find new patterns of development and life-styles in the world.

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UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION *see* Food and Agriculture Organization of the United Nations

UNITED NATIONS GENERAL ASSEMBLY

1. Historical Background

The General Assembly is one of the six "principal organs" established by Art. 7 of the → United Nations Charter. The other five are the → United Nations Security Council, the → United Nations Economic and Social Council (ECOSOC), the Trusteeship Council (→ United Nations Trusteeship System), the → International Court of Justice and the Secretariat (→ United Nations Secretary-General; → International Secretariat). The General Assembly, however, holds a central position in the Organization. Unlike the five other principal organs, it has functions extending to the whole scope of the Charter. But, in origin it was designed for discussion rather than action.

Historically, it may be regarded as the descendant of the Assembly of the → League of Nations, although those who framed the Charter were anxious not to follow the League of Nations pattern when establishing the → United Nations. Strictly speaking, the UN was not the "successor" of the League of Nations (→ International Organizations, Succession). Nevertheless, the

General Assembly has assumed some functions exercised by organs of the League of Nations.

The historical background and the creation of the General Assembly are an integral part of the story of the League, the UN and the UN Charter. The main initiative for the establishment of a "United Nations organization" came from the heads of government of the United Kingdom, the United States and the Soviet Union. It was given expression in declarations made by them in 1943 in Moscow and Tehran (→ Tehran Conference). These declarations contemplated an organization based on the sovereign equality of all peace-loving States and the participation of all nations large and small. Consultation on preliminary suggestions, in which representatives of China, the United Kingdom, the United States and the Soviet Union participated, led to the publication of the Dumbarton Oaks Proposals in October 1944 (→ Dumbarton Oaks Conference). These focused on the maintenance of peace and security and the central role to be played by the Security Council for that purpose, but they also provided for a General Assembly, a Secretariat and a Court. The Dumbarton Oaks Proposals, together with the formula for voting in the Security Council agreed at the → Yalta Conference in February 1945 and certain ideas on trusteeship, formed the basis of discussion at the San Francisco Conference of 1945. Meanwhile, at an Inter-American Conference held in Mexico City, the Latin American representatives expressed dissatisfaction with the Proposals and urged changes on a number of points, including an increase in the role and powers of the General Assembly. At the San Francisco Conference, attended by the representatives of 50 States, the smaller powers secured a number of changes which enhanced the position of the General Assembly. Most significant was the general authority conferred by Art. 10 of the UN Charter (see section 4(a) *infra*). The General Assembly also gained authority as a result of the elevation of ECOSOC to the rank of a principal organ, the establishment of the Trusteeship Council, and the addition of Chapter XI of the Charter containing the "Declaration Regarding Non-Self-Governing Territories" (→ Non-Self-Governing Territories).

The Charter came into force on October 24, 1945 and the first meeting of the General Assembly was held in London on January 10, 1946. Since then the membership of the General Assembly, in line with that of the UN, has more than trebled, from 50 in 1945 to 157 in 1981. During the same period the influence of the General Assembly has also greatly increased. It has gone far beyond the role of "town meeting" of the world, contemplated for it in some quarters at the San Francisco Conference.

2. Membership and Structure

(a) Membership and representation

By Art. 9 of the Charter, the General Assembly consists of all the members of the UN. The distinction drawn by Arts. 3 and 4 between original and admitted members of the UN has no significance for the purposes of membership of the General Assembly. On the other hand, a State which is a party to the Statute of the International Court of Justice, but not a member of the UN, may participate in the election of judges.

Art. 9 also provides that each member shall have not more than five representatives in the General Assembly. The Rules of Procedure also allow each member to have up to five alternate representatives who may, upon due designation, act as representatives. Otherwise, the composition of a member's delegation is left to its discretion. In the case of committees on which all members have the right to be represented, a member may as a rule be represented by a person having adviser or expert status.

(b) Structure

For details concerning the structure and the procedure guidelines of the General Assembly it is necessary to consult both the Charter and the Rules of Procedure. In brief, decisions of the General Assembly are taken in plenary meetings, but these are usually taken on the basis of reports from its seven Main Committees. Under Rule 98, these are: Political and Security Committee (including the regulation of armaments) (First Committee); the Special Political Committee; the Economic and Financial Committee (Second Committee); the Social, Humanitarian and Cultural Committee (Third Committee); the Trusteeship Committee (including Non-Self-Governing Territories) (Fourth Committee); the Ad-

ministrative and Budgetary Committee (Fifth Committee); and the Legal Committee (Sixth Committee). The General Assembly is also assisted by the Advisory Committee on Administrative and Budgetary Questions consisting of 16 members and the Committee on Contributions with 18 members. All members are entitled to be represented on each of the Main Committees.

The foregoing Committees may be regarded as part of the permanent structure of the General Assembly. Technically, they are subsidiary organs created under Art. 22 of the Charter which authorizes it to "establish such subsidiary organs as it deems necessary for the performance of its functions". The titles of the Main Committees indicate broadly the scope of the activities of the General Assembly, but they give no idea of the depth of penetration which the General Assembly has been able to achieve by means of the establishment of subsidiary organs, such as regional Economic Commissions (→ United Nations, Economic Commissions), the Commission on Human Rights (→ Human Rights, Activities of International Organizations), the → International Law Commission, the Committee on the Peaceful Uses of Outer Space (→ Space and Space Law) and even subsidiary organs exercising functions in the field of peacekeeping (→ United Nations Peacekeeping System).

3. Decision-Making Process

The General Assembly meets in regular annual sessions and in such special sessions as occasion may require (UN Charter, Art. 20). It adopts its own rules of procedure, which conform with and supplement the Charter. Voting is governed by Art. 18, by which each member has one vote (→ Voting Rules in International Conferences and Organizations). Art. 18 distinguishes between "important questions" and "other questions". Decisions on important questions are to be made by a two-thirds majority of the members present and voting. Decisions on other questions are to be made by a majority of the members present and voting (a "simple majority"). The distinction is significantly different from the one applicable in the Security Council, where it is between procedural matters (to which the → veto does not apply) and all other matters. "Decisions" in this context has a broad meaning, not limited to the substance of a resolution or a motion but extending to any text finally adopted by the General Assembly.

What qualifies as an "important question" has been a matter of controversy in the General Assembly. This has turned on the meaning of paras. 2 and 3 of Art. 18. Para. 2 states:

> "These [important] questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of the members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions."

This provision has to be read with para. 3, which provides that, "Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority", are to be made by simple majority.

It has been argued that the list of "important questions" specified in Art. 18(2) is exhaustive, and that other questions can only become "important" by being comprised in an "additional" category under Art. 18(3). On the other hand, it has been argued that the General Assembly may treat any question as "important" so as to require a two-thirds majority. In practice, it has seldom been necessary for the rule to be invoked by members of the General Assembly. Most resolutions have been adopted unanimously or by large majorities, making the application of the two-thirds rule of no practical relevance; alternatively, the question has been determined by Presidential ruling without challenge. Occasionally, it has been argued that a two-thirds majority should be required for special reasons, e.g. because a question of Charter interpretation was involved (Treatment of Indians in the Union of South Africa, UN GA, Official Records, 1st Session, 2nd Part, 52nd Plenary Meeting, December 8, 1946, pp. 1048–1060) or because of its political importance (Question of the representation of China in the United Nations, UN GA, Official Records,

16th Session, 1072nd, 1074th and 1079th Plenary Meetings, December 1961). The General Assembly exercised its power to add additional categories by requiring a two-thirds majority on questions relating to reports and petitions concerning South West Africa (UN GA Res. 844 (IX) of October 11, 1954; see → Namibia).

Since the mid–1960s, an appeal to the two-thirds rule has in many cases become superfluous as a result of the adoption of proposals by → consensus. This process may vary, but consensus is usually achieved by consultation between the promoters of a draft resolution or proposal and interested and opposing delegations, enabling them to come forward with a draft which is adopted as a consensus without voting.

Decisions of the Main Committees are made by simple majority (Rule 125). Provision is made in Rule 87 for roll-call votes and voting by mechanical means in both the General Assembly and in Main Committees.

4. Activities

(a) General

The functions of the General Assembly extend to the whole scope of the Charter and comprise a number of specific functions and powers relating in particular to other UN organs. Consequently, the activities of the General Assembly, leaving the Security Council and the ICJ to one side, are virtually co-extensive with those of the UN. A full examination of them would involve a study of most of the articles of the Charter itself. Accordingly, it is natural that, while there is a separate "Repertoire of the Practice of the Security Council", there is no such separate source of information for the General Assembly. For that information, it is necessary to consult the "Repertory of Practice of United Nations Organs" and other general sources using the relevant article or articles of the Charter as the key.

The main functions and powers of the General Assembly are stated in Arts. 10 to 17. The most general and fundamental is Art. 10, which authorizes the General Assembly to discuss any questions or matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter and, except as provided in Art. 12, to make recommendations on any such questions or matters. Art. 12 prohibits the General Assembly from making any recommendations with regard to a dispute or situation while the Security Council is exercising its Charter functions in respect of the dispute or situation.

Full use has been made by the General Assembly of Art. 10, as well as of the other articles which confer functions and powers on it. As can be seen from Art. 1, the purposes of the UN reach into virtually every aspect of human life and endeavour. In the exercise of its broad functions, the General Assembly has not always been prevented from taking more direct steps by the stress laid in Art. 1 and elsewhere on international cooperation, e.g. in connection with the protection of → human rights and the prevention of discrimination (→ Discrimination against Individuals and Groups). Broadly speaking, the purposes of the UN, as stated in Art. 1, are: "to maintain international peace and security ..." (para. 1), "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ..." (para. 2), and "to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (para. 3; → Racial and Religious Discrimination; → Sex Discrimination). It is to the substantive aspects of the second and third of these purposes that the General Assembly has directed most of its efforts and probably made its greatest contribution.

The extent to which the General Assembly has been able to launch projects with practical and substantive results is remarkable having regard to the fact that, in general, as provided in Art. 10, it is given only power to make recommendations. Yet, it has achieved results by various means, for example, by using the authority which its resolutions carry in themselves (→ International Organizations, Resolutions), by making "declarations" such as the Declaration on Human Rights (→ Human Rights, Universal Declaration (1948)), by conferring powers on subsidiary organs (e.g. powers of enquiry into allegations of violation of

human rights), by exercising control over the Secretary-General and by convening international conferences (→ Congresses and Conferences, International).

(b) Specific functions and powers

The articles following Art. 10 add little, if anything, to the substance of the functions and powers conferred on the General Assembly by that Article. They do, however, highlight certain points and provide convenient pegs for the support of particular items or proposals. Art. 11(1) gives the General Assembly the right to consider and make recommendations on the general principles of cooperation in the maintenance of international peace and security and, together with Art. 12, governs the relations between the General Assembly and the Security Council. Art. 14, which is also subject to Art. 12, gives the General Assembly the right to recommend measures for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations. Art. 15(1), which provides for annual and special reports by the Security Council to the General Assembly, does not, however, give the latter any measure of control over the former.

Art. 13(1) (a) provides that the General Assembly is to initiate studies and make recommendations for the purposes of "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification". This subparagraph provides the basis for the Statute of the International Law Commission. Subpara. (b) reflects Art. 1(3) mentioned above and is reinforced by the responsibilities of the General Assembly set forth in Chapters IX and X concerning economic and social cooperation and ECOSOC. In particular, by Art. 60, responsibility for the discharge of the functions set forth in Chapter IX are vested in the General Assembly and, under the authority of the General Assembly, in ECOSOC.

The General Assembly is, by virtue of Arts. 16 and 85, also responsible for the operation of the international trusteeship system and has authority over the Trusteeship Council (see Chapters XII and XIII). The Trusteeship Council is, however, now virtually defunct due to the achievement of independence by former trust territories. The General Assembly was given no corresponding express functions or powers with respect to non-self-governing territories (Chapter XI), but starting from the provisions of Arts. 73 and 74 has regularly considered reports from the administering authorities and has maintained pressure towards the independence of such territories.

Different in character, but of great importance, is Art. 17. This Article gives the General Assembly power to consider and approve the budget of the Organization and to apportion expenses of the Organization among its members (→ International Organizations, Financing and Budgeting). On the basis of these provisions, and other express and implied powers conferred by the Charter (→ International Organizations, Implied Powers), the General Assembly has the power to authorize or to make financial commitments which will bind the Organization on matters within the scope of the Charter. Of special significance in this connection are the advisory opinions of the ICJ in the → Awards of Compensation Made by UN Administrative Tribunal and in the → Certain Expenses of the United Nations Cases.

There are several other express or implied powers of varying importance which merit consideration, such as the powers in connection with amendment and interpretation of the Charter, and other powers conferred by a number of articles, such as those in connection with elections mentioned in Art. 18(2) (quoted in section 3, *supra*).

5. Special Legal Problems

The General Assembly has had to face a number of legal problems which have arisen out of the interpretation and application of the Charter (→ Interpretation in International Law) and in connection with specific issues that have arisen in the course of its work. The latter are too diverse to be memtioned here, but problems in the former category include:

(a) The existence and extent of the right to interpret the Charter;

(b) The law-creating effect, i.e. binding character of resolutions;

(c) Whether the General Assembly has power to admit a new member if the Security Council

fails or refuses to make a recommendation (→ International Organizations, Membership; → Admission of a State to Membership in United Nations (Advisory Opinions));

(d) Whether and, if so, how the General Assembly is entitled to exercise the supervisory functions of the League of Nations in the case of a mandated territory (→ Mandates) not placed under trusteeship (→ International Organizations, Succession; → South West Africa/Namibia (Advisory Opinions and Judgments));

(e) The existence and nature of the international personality of the Organization (→ Subjects of International Law);

(f) The interpretation of Art. 2(7) prohibiting the UN from intervening in matters which are essentially within the → domestic jurisdiction of any State;

(g) The nature, extent and conditions for the exercise of a "peacekeeping" role and the obligation to meet liabilities arising therefrom (→ United Nations Forces);

(h) The right of the General Assembly to exclude a member State from participation in the activities of the Organization.

These are only some examples of legal problems that have arisen in the course of the work of the General Assembly. Practically every article of the Charter has or could give rise to questions of interpretation. This possibility has not caused the General Assembly as much trouble as might have been expected because it has usually sought and found practical and political solutions. It has only rarely gone so far as to request an advisory opinion from the ICJ.

6. Evaluation

The three-fold increase in the membership of the General Assembly has had a profound effect on its character. For example, the new States, freed from the shackles of tradition, have compelled the international community to take a new look at old legal concepts and to develop new ones, especially in the economic and social fields (→ New States and International Law; → International Economic Order). Also, much more influence is exercised by regional groups which operate to a large extent outside the formal meetings. Indeed, the corridors of the General Assembly provide a valuable forum for informal discussion of political issues not necessarily connected with its agenda, although some reservation must be expressed as to the suitability of such a forum for matters of a specialized or technical nature.

To the casual observer it might seem that much time is wasted in repetitive and fruitless debate. To some extent this is true, but the General Assembly has many substantial achievements to its credit such as those in the field of human rights, the peaceful uses of outer space, and the progress of dependent peoples towards full self-government. Particularly noteworthy is the provision of substantial sums of money for technical assistance and the development of international cooperation (→ Economic and Technical Aid; → International Law of Cooperation). It should also be noted that, although the General Assembly is not a legislature, it has provided the means for important steps in the progressive development and → codification of international law, for example in the law of the sea (→ Conferences on the Law of the Sea) and in the law of → treaties.

Without the necessary will of member States, the General Assembly cannot achieve much in the field of peace and security, → disarmament or → arms control. Nevertheless, as a world forum its achievements far outshine those of the Assembly of the League of Nations.

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UNITED NATIONS HABITAT AND HUMAN SETTLEMENT FOUNDATION *see* United Nations Commission on Human Settlements

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES *see* Refugees, United Nations High Commissioner

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

I. HISTORICAL BACKGROUND

In a sense, the United Nations Industrial Development Organization (UNIDO) has been in transition during the entire period of its existence, and will so continue for some time to come until it achieves its independent status as a → United Nations Specialized Agency. Thereupon it will be the first such agency to have started its existence as an organ of the → United Nations.

The origins of UNIDO can be traced to a series of studies on a programme of rapid industrialization of → developing States that the UN Secretariat carried out during the early 1950s at the request of the → United Nations Economic and Social Council (ECOSOC), which had been stimulated by a resolution the → United Nations General Assembly adopted in 1951, at its sixth session. These studies culminated in a programme of work on industrialization and productivity prepared by the → United Nations Secretary-General in 1956 and endorsed the next year by ECOSOC and the General Assembly. At that time it was first suggested that a special body to deal with industrialization problems be established, whose political organs could relieve the Council and the Assembly of the detailed consideration of those questions and whose secretariat could carry out more substantive work than the existing Industry Section of the Bureau of Economic Affairs.

During the next several years, the UN's involvement in questions of industrialization became more intense, as did the search for more satisfactory organizational arrangements. The Industry Section of the Secretariat became a Branch in 1959, and in 1962 it became the Industrial Development Centre, headed by a Commissioner for Industrial Development. After considering a General Assembly suggestion that it establish another functional commission, ECOSOC in 1961 instead created a Committee for Industrial Development. Outside advice to both the Secretariat and the political organs was provided in 1957 by a panel of experts on industrialization, in 1959 by the ten-member Advisory Committee on the Work Programme on Industrialization and in 1963 by the ten-member Advisory Committee of Experts on the Industrial Development Activities of the United Nations System.

Proposals for future arrangement were also considered in the Administrative Committee on Co-ordination (ACC) and in other inter-organizational organs, as well as at the first session of the → United Nations Conference on Trade and Development (UNCTAD). The Advisory Committee of Experts explicitly examined three alternative approaches: strengthening the existing Centre; instituting a new Specialized Agency; and creating a subsidiary organization within the UN. Although the Committee favoured the latter solution, ECOSOC in 1964 requested the Secretary-General to prepare the constitution

of a Specialized Agency, which he presented later that year as the Draft Statutes for a United Nations Agency for Industrial Development. In 1965 a decision was finally reached: acting on the advice of ECOSOC's Committee on Industrial Development, the General Assembly established an autonomous organization within the UN for the promotion of industrial development, as well as a 36-member Ad Hoc Committee on the United Nations Organization for Industrial Development (Res. 2089 (XX)). On the basis of the report of that Committee, the Assembly on November 17, 1966 unanimously adopted Resolution 2152 (XXI) setting out the provisions that constitute the statute of the original UNIDO.

After the new organization, which absorbed the earlier New York-based Centre, began functioning in Vienna, the erstwhile proponents of its establishment as an independent agency urged the Secretary-General and the General Assembly to grant UNIDO ever-increasing autonomy in budgetary and administrative matters; in particular, this was advocated by an 18-member Group of High-level Experts on Long-range Strategy for UNIDO, established by the Secretary-General in 1972 at the request of the General Assembly, and subsequently by the 27-member Ad Hoc Committee on a Long-range Strategy for UNIDO, appointed by the Industrial Development Board in 1973. Although gradually a few concessions were made to these pressures, constitutional objections relating to the → United Nations Charter prevented any fundamental changes.

Drawing the consequences from these frustrations, and relying on the General Assembly's adoption in 1974 of the Declaration and Programme of Action on the Establishment of a New International Economic Order and of the → Charter of Economic Rights and Duties of States, the Second General Conference of UNIDO, in its 1975 Lima Declaration and Plan of Action, recommended to the Assembly that UNIDO be converted into a Specialized Agency. For this purpose it requested the Secretary-General, in consultation with the Executive Director of UNIDO, to draw up draft statutes for such an agency, embodying certain structural provisions set out in the Plan of Action, to be adopted by the General Assembly after consideration by ECOSOC. The Secretary-General thereupon prepared a draft Constitution for UNIDO, which the General Assembly referred to an Intergovernmental Committee of the Whole to Draw Up a Constitution for UNIDO as a Specialized Agency. That Committee held five sessions in Vienna during 1976-1977, and the revised draft it prepared was referred by the Assembly to the plenipotentiary Conference on the Establishment of UNIDO as a Specialized Agency. After an inconclusive 1978 session in New York, the Conference adopted the Constitution of the United Nations Industrial Development Organization (A/CONF.90/19) on April 8, 1979 in Vienna. In welcoming this development, the General Assembly, in a Resolution (34/96) adopted later that year on the recommendation of the Conference, provided for an orderly transition from the original UNIDO to the new one, to take place during the year in which the first General Conference of the new organization is convened (within three months of the entry into force of the Constitution), at the end of which year the original organ is to be terminated (→ International Organizations, Succession).

II. STRUCTURE

Any discussion of the structure of UNIDO must take into account the two successive forms of that organization: (1) the original UN organ and (2) the later Specialized Agency. Consequently, the descriptions that follows in this section are divided into two parts, corresponding to these two forms.

A. Constitutional Instrument

1. UNIDO as a UN Organ

The basic instrument of the original UNIDO is section II of UN General Assembly Resolution 2152 (XXI) of November 17, 1966, which specifies the purpose, functions, organs and financial arrangements of UNIDO and the methods of its interaction with other organs and organizations, and also makes transitional arrangements regarding the earlier UN organs active in this field (the Centre, the Commissioner and the Committee for Industrial Development) as well as prescriptions for future institutional relations. Except for its

Annex, which lists and classifies the States eligible for election to the Industrial Development Board (IDB), that resolution has not been formally amended even though several later resolutions of the General Assembly have to some extent modified the terms of reference of the organization. Resolution 34/96 provides for the organs and ultimately the organization created by the 1966 Resolution to be terminated and replaced by the new organization and its organs.

Under section I of the Assembly resolution, UNIDO is "established as an organ of the General Assembly [to] function as an autonomous organization within the United Nations".

2. UNIDO as a Specialized Agency

The basic instrument of the new UNIDO is its Constitution, which is a multilateral treaty opened for signature from April 8, 1979 until its entry into force. It specifies the objectives and functions of the organization, defines its membership, establishes three principal and one subsidiary organs, prescribes detailed financial arrangements and makes provisions concerning relations with the UN and other organizations, the location of the headquarters seat, legal capacity, privileges and immunities, and the settlement of disputes. The final clauses are somewhat unusual, so as to guard against an entry into force (leading to the automatic termination of the existing organization) with too few members or members too impecunious to continue the work of the former organization, without, however, requiring that any particular States need become parties.

B. Membership

1. UNIDO as a UN Organ

The General Assembly nowhere formally specified the membership of UNIDO, though it provided that the members of the IDB be elected from among "States Members of the United Nations and members of the specialized agencies and of the International Atomic Energy Agency", and listed these States in the Annex to Resolution 2152 (XXI). As new States have become members of any of these organizations, the Assembly has added them to the Annex; however, it has also, on the specific request of certain States, removed them from the Annex even though they remained members of one or more of the specified organizations.

2. UNIDO as a Specialized Agency

States become members of the new organization by becoming parties to its Constitution, which any member of the UN, of a Specialized Agency or of the → International Atomic Energy Agency may do directly, and which other States may do after their membership has been approved by the General Conference by a two-thirds majority, acting upon the recommendation of the IDB. States can become parties to the Constitution by signing and ratifying, accepting or approving it and then giving notice of their agreement to its entry into force; after such entry into force, other States must either give such notice if they had already signed and ratified, or they may simply accede.

Although States suspended by the UN are automatically to be suspended from UNIDO, and members that are excessively in arrears in paying their assessed contributions are normally to be deprived of their vote (→ Voting Rules in International Conferences and Organizations), expulsion is not provided for. Members may withdraw at any time, though they remain liable for assessed contributions for the year of withdrawal and for an equal amount for the next year, as well as for any unconditional pledges of voluntary contributions.

C. Organs

Although the names of the organs of UNIDO in its two forms largely coincide – a conscious decision of those who negotiated the Constitution – their nature is considerably different. In its original form, the power of decision regarding the finances and administration of UNIDO lay with the UN General Assembly and the UN Secretary-General; in the new organization these powers will naturally reside in the several statutory organs, whose essential functions will thus be substantially different from those of their earlier namesakes.

1. General Conference

(a) UNIDO as a UN organ

No standing conference is provided for in the General Assembly resolution establishing

UNIDO; under that resolution, the Assembly itself is the supreme legislative body of UNIDO. Consequently, the several conferences that have been convened have not had any direct legal impact on the organization, though their moral influence (particularly that of the Lima Conference) has been considerable.

A special General Conference of UNIDO met in Vienna from June 1 to 8, 1971; the second General Conference of UNIDO met in Lima from March 12 to 26, 1975; the third met in New Delhi from January 31 to February 9, 1980; and a fourth is tentatively scheduled for 1984 in Nairobi. All these Conferences, for each of which the IDB acted as preparatory committee at the General Assembly's request, were convened on an *ad hoc* basis by the Assembly. Though the Lima Conference proposed that these Conferences be institutionalized and be convened every four years, it is not clear whether and how such General Assembly-convened meetings are to continue after the Constitution of UNIDO enters into force, which provides for a different type of General Conference.

(*b*) *UNIDO as a Specialized Agency*

The Constitution of UNIDO establishes the General Conference as one of three principal and one of four statutory organs of the Organization. It is to meet in regular session every two years, normally in Vienna; special sessions may also be convened.

The Conference is to have the usual functions of the most representative organ, in which all members may participate on a basis of equality. Its most significant independent powers are to elect members of the IDB and of the Programme and Budget Committee; it may also adopt conventions and agreements on matters within the competence of the organization, and recommend these to the members. In conjunction with the IDB, it approves members of the organization, the appointment of the Director-General, certain administrative rules and the relationship agreement with the UN. In conjunction with the Board and the Programme and Budget Committee, whose recommendations it may override by use of a special procedure and a qualified majority, it approves the programme and budget; somewhat similarly it also adopts the scale of assessed contributions.

The decisions of the Conference are for the most part to be taken by simple majority, though a two-thirds majority is required for the approval of the programme and budget, the scale of assessments, the election of members, the UN relationship agreement, a change in the headquarters seat from Vienna and amendments to the Constitution.

2. *Industrial Development Board*

(*a*) *UNIDO as a UN organ*

The IDB provided for in General Assembly Resolution 2152 (XXI) consists of 45 members elected by the Assembly for overlapping three-year periods; specified numbers of States must be chosen from among the four lists set out in the Annex to the resolution, corresponding roughly to A, African and Asian States; B, Western European and allied (or "market-economy") States; C, Latin American States; D, Eastern European (or "centrally-controlled-economy") States.

The original IDB has only limited authority, basically to make proposals, through ECOSOC, to the General Assembly, and to supervise the activities of the UNIDO secretariat. Though it reviews the programme and budget drafted by the Executive Director, the final decisions on these proposals are made in the first instance by the Secretary-General and in the last by the General Assembly. The IDB holds one regular session each year, normally of about three weeks' duration; in 1972 it established a Permanent Committee consisting of all Board members, which meets for a few days before each IDB session as well as for about a week between such sessions. All decisions in the IDB and the Permanent Committee require a simple majority, but normally → consensus is striven for.

(*b*) *UNIDO as a Specialized Agency*

The IDB provided for by the Constitution of UNIDO is to consist of 53 members, to be elected by the General Conference for overlapping renewable four-year periods; again, specified numbers of States are to be chosen from among the four lists set out in Annex I to the Constitution, which lists are initially to be same as those in the Annex to General Assembly Resolution 2152 (XXI), as amended to the time the Constitution enters into force.

The principal function of the IDB is to make recommendations to the Conference, such as on the approval of members and on financial matters. It may also carry out functions that the Conference delegates to it, review the implementation of the programme and budget, approve relationship agreements and arrangements with intergovernmental and → non-governmental organizations, and take action in various emergencies.

The IDB is normally to hold one session each year, though special sessions may be convened. Its decisions are to be taken by simple majority, except when a two-thirds majority is required by the Constitution, such as on all significant financial questions and on amendments to certain provisions of the Constitution.

3. Programme and Budget Committee

As the original UNIDO has no fiscal autonomy, it has no need of any special organ to deal with budgetary questions. However, in order to provide some assurance to the States destined to become the major contributors to the new UNIDO, its Constitution provides for a Programme and Budget Committee, established as a subsidiary but statutory organ, with a composition slightly more weighted towards the developed (lists B and D) States than the Board itself. The 27 members are to be elected for co-terminus and renewable two-year terms by the General Conference, which is to choose specified numbers of States from among the four lists set out in Annex I to the Constitution.

The Committee's principal functions are to make recommendations to the IDB on the draft programme and budget proposed by the Director-General, and to prepare a draft scale of assessments; it must also be consulted on any proposed changes in the programme and budget and on proposals considered by the Conference that have financial implications. It is normally to meet once a year and must take all its decisions by a two-thirds majority.

4. Secretariat

(a) UNIDO as a UN organ

General Assembly Resolution 2152 (XXI) provides for a UNIDO secretariat whose members – at present about 1300 – are appointed in accordance with Art. 101 of the UN Charter (i.e. by the UN Secretary-General under the UN Staff Regulations) and thus basically constitute part of the UN staff (→ Civil Service, International). It is headed by an Executive Director, who, in effect, is the successor to the former Commissioner for Industrial Development and is appointed by the Secretary-General subject to confirmation by the General Assembly. He has overall responsibility for all the activities of the organization, services the IDB, and carries out other functions that may be entrusted to him by the latter.

(b) UNIDO as a Specialized Agency

The Constitution of UNIDO established as the third principal organ the Secretariat, headed by a Director-General, who is appointed by the Conference on the recommendation of the IDB for a once renewable four-year term. He serves as chief administrative officer of the organization, carrying out his functions subject to general or specific directions of the Conference and the IDB. The members of the staff are to be appointed by the Director-General, with the approval of the IDB in respect of Deputy Directors-General, and are to serve under conditions established by the Conference on the recommendation of the IDB and which are to conform as far as possible to those of the UN common system. It is recommended in General Assembly Resolution 34/96 that the new organization take over the staff of the former UN organ.

The principal functions of the Director-General specified in the Constitution are to propose the programme and budget, to appoint and administer the staff, and to establish relationships and working arrangements with inter-governmental and non-governmental organizations.

D. Finances

1. UNIDO as a UN Organ

Under General Assembly Resolution 2152 (XXI) the expenditures of UNIDO are classified as being for administrative and research activities on the one hand and for operational activities on the other (→ International Organizations, Financing and Budgeting). The former are financed from the regular UN budget, adopted by the General Assembly and paid for by contributions assessed on UN member States and on non-members participating merely in UNIDO's

activities. The greatest part of the operational expenditures, used almost entirely for technical assistance, is paid for by the → United Nations Development Programme (UNDP), which raises its funds by voluntary contributions and for which UNIDO acts as one of several executing agencies. Another part is paid for by direct voluntary contributions to UNIDO (mainly through the UN Industrial Development Fund), either for general purposes or specifically for particular projects; a small part is financed by the UN's regular programme of technical assistance (which constitutes part of the UN's regular budget).

2. UNIDO as a Specialized Agency

The financial provisions of the UNIDO Constitution were the most difficult to negotiate. Basically, they provide for a continuation of the same pattern of financing as for the original UN organ, except that the expenditures formerly financed from the UN regular budget are to be financed from UNIDO's regular budget, which will be developed and approved entirely by its own organs and assessed on its own member States – though according to a scale based to the extent possible on that of the UN. In particular, it is foreseen that the largest part of technical assistance will continue to be financed by the UNDP, and that the Industrial Development Fund will be transferred to and administered by the new organization.

E. Relationships

1. UNIDO as a UN Organ

General Assembly Resolution 2152 (XXI) identifies UNIDO as an organ of the General Assembly (i.e. one under Art. 22 of the UN Charter), to function as an autonomous organization within the UN. It also specifies in some detail UNIDO's relationships with other UN organs and makes provisions concerning working relationships with the Specialized Agencies and with other international and non-governmental organizations in order to enable UNIDO to "play the central role in and be responsible for reviewing and promoting the coordination of all activities of the United Nations system in the field of industrial development", though taking account of the Charter responsibilities of ECOSOC for coordination and of the UN's existing relationship agreements with other agencies. Thus, at least formally, UNIDO's relationships with other UN organs are defined largely by that and other General Assembly resolutions; and with other organizations these relationships are largely subordinated to their relations with the UN.

However, UNIDO has concluded written administrative arrangements with a number of these organs and organizations, and the Executive Director is a member of the principal inter-secretariat coordinating bodies of the UN system (e.g. the Administrative Committee on Coordination).

2. UNIDO as a Specialized Agency

It is explicitly foreseen in its new Constitution that UNIDO will become a Specialized Agency by concluding with the UN a relationship agreement pursuant to Arts. 57 and 63 of the Charter. Presumably that agreement, or other subsidiary or separate ones, will provide for continued UNIDO participation in or cooperation with the numerous organs of the UN system and of the UN common system of personnel administration.

The Constitution also provides for the conclusion of agreements with other inter-governmental and governmental organizations within or outside the UN system and the establishment of relationships with non-governmental and other organizations, as well as for working arrangements with such organizations.

III. ACTIVITIES

The purpose of UNIDO, both as originally established by the General Assembly and as provided in its Constitution, is to promote worldwide industrial development, with particular reference to that in the developing countries; the Constitution places prime emphasis on the latter function.

The principal activity of UNIDO is technical assistance for the development and transfer of industrial technology (→ Technology Transfer; → Economic and Technical Aid). Such assistance is delivered to individual States or to groups of States, through the provision of experts, training, fellowships and equipment. Though most aid

takes the form of traditional medium- or large-scale projects approved by the usual machinery, short-term and emergency aid may be provided quickly through the Special Industrial Services Programme.

Another major function is that of coordination, mainly for the purpose of furthering certain industries, especially in developing countries, and of assisting in the redeployment of industries to such countries. A major instrument for this purpose is the System of Consultations, which take place on sectoral, regional, interregional and global bases and for which a special set of rules of procedure was adopted by the Permanent Committee of the IDB in 1981. Another endeavour is to further technical cooperation among developing countries, in particular as part of the Co-operative Programme of Action on Appropriate Industrial Technology. UNIDO also seeks to assist developing States in receiving financing for industrialization projects, and for this purpose has given consideration to the establishment of an International Bank for Industrial Development (IBID).

In order to support its other activities, UNIDO carries out programmes of research and disseminates information, in particular through meetings and publications. To this end, a significant project is the Industrial and Technological Information Bank (INTIB) designed to help developing countries in choosing technologies; another is the Technological Information Exchange System (TIES) designed to obtain access to specialized information about the terms and conditions of technology contracts approved by governmental regulatory agencies in selected developing countries.

IV. SPECIAL LEGAL PROBLEMS

During the initial period of UNIDO's formal existence as a UN organ, an overriding structural question, mostly of an administrative and political but partly of a legal nature, was the relationship of this "autonomous organization within the United Nations" to the other organs, principal and subsidiary, of the UN. In particular, it was repeatedly examined how much autonomy UNIDO would and should have (under the special resolution establishing it and under the UN Charter) from the Secretary-General in his capacity as chief administrative officer of the UN.

The unprecedented transformation of a UN organ into a Specialized Agency is likely to raise additional problems, particularly during the period of transition. Though the basic provisions are contained in the new Constitution and in General Assembly Resolution 34/96, many detailed questions may be expected to arise whose nature cannot yet be clearly anticipated. This is so because political differences made it impossible to establish a preparatory commission to formulate the many subsidiary legal instruments required by a new international organization to define its internal rules as well as its relationships to other international entities (→ International Organizations, Internal Law and Rules).

Substantive legal questions arise explicitly out of UNIDO's task to further the transfer of technology and indeed the redeployment of industry to developing countries (→ International Law of Development). Others relate to certain institutional endeavours, such as the formulation of rules for the System of Consultations and the drafting of a charter for the proposed IBID.

V. EVALUATION

From its very beginning, even before attaining the status of a UN organ, UNIDO has been at the focal point of controversy between developed and developing States, i.e. between those already largely industrialized and those endeavouring to reach that status or at least to increase their potential in that field. In the foreground of that controversy have been the various issues relating to the structure and autonomy of UNIDO, which appear to be reaching a resolution through the entry into force of the Constitution of the new organization. However, important questions concerning relations with the UN and with other organizations will still have to be dealt with to accommodate UNIDO's claim of a primary and central role as to all international aspects of industrialization. More fundamental than these questions are those relating to the financing of UNIDO. Although they are mostly expressed in terms of the extent such financing should be based on assessed or on voluntary contributions, and the extent the latter should be made in convertible currencies, the real issue of course is the total amount to be provided and thus the size and

growth of the organization. But even more basic is the implicit conflict about the fundamental goal of the organization: to increase rapidly the industrialization of developing countries and in particular the share of these countries of the world's industrial production (to 25 per cent by the year 2000), if necessary by redeploying industrial capacity from developed countries. Even to the degree this goal is accepted by governments, certain of these have doubts as to whether it can be accomplished by inter-governmental activities or regulations, or whether it should rather be left to normal market and other economic forces.

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PAUL C. SZASZ

UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

1. Historical Background

The United Nations Institute for Training and Research (UNITAR) is an autonomous institution within the → United Nations system, supported by voluntary contributions from member States, foundations and other non-governmental sources. It was established in 1965 by the → United Nations Secretary-General, in accordance with → United Nations General Assembly Resolution 1934 (XVIII) of December 1963. The Institute was founded to enhance, through training and research, the effectiveness of the UN in achieving its major objectives, in particular the maintenance of peace and security and the promotion of economic and social development (→ Peace, Means to Safeguard; → International Law of Development).

Since its inception, the Institute has been guided by an Executive Director from Africa, first by Mr. Gabriel d'Arboussier (Senegal), followed by Chief S. O. Adebo (Nigeria), and presently by Dr. Davidson Nicol (Sierra Leone). It is based in New York.

2. Structure

The Institute's policy is formulated by an international Board of Trustees. Twenty-four statesmen, government officials and scholars from around the world are appointed to serve in their individual capacities. The UN Secretary-General, the President of the General Assembly, the President of the Economic and Social Council (ECOSOC) and the Executive Director of the Institute are *ex officio* members of the Board. The Executive Director has overall responsibility for the organization, direction and administration of the Institute. The Executive Director is assisted by the Director and Deputy Director of Research, the Director and Assistant Director of Training, the Director of the Project on the Future, the Secretary to the Board and the Chief of Finance and Administration, and by about 35 full-time professional staff.

UNITAR maintains a regional office in Geneva which provides liaison with the UN and its Specialized Agencies in Europe (→ United Nations, Specialized Agencies), promotes exchange and cooperation with universities, research institutions and foundations in the region, and organizes programmes for members of permanent missions similar to those held in New York. UNITAR is supported entirely by voluntary contributions from member States, inter-governmental organizations, foundations and individuals. During 1981, contributions to the General Fund amounted to US $757 960; and contributions to the Special Purpose Grants amounted to US $115 210.

3. *Activities*

In the 15 years of its existence the Institute has spent about 20 million dollars in organizing courses, conferences and seminars involving several thousand national and international officials and diplomats, and in publishing over a hundred books, reports and bulletins. The activities of the Institute are organized into three substantive divisions: the Training Department, the Research Department and the Special Project on the Future.

(*a*) *Training*

The training programmes of UNITAR deal with issues related to international relations, including multilateral → diplomacy, international organizations and regional cooperation. They are intended for foreign service officers and other national officials whose work is international in scope, and for international officials, particularly those serving the UN. Recently, the Training Department has begun to design special programmes for newly independent countries and to assist → developing States in the establishment of their own institutes for the training of national cadres. By the end of 1980, over 5000 participants had benefitted from the Institute's training programmes.

(*b*) *Research*

UNITAR research on the UN and related international organizations is concentrated on global and institutional change. It is presently organized into two programme areas: the programme on the UN and the new → international economic order, and the programme on international law, security and diplomacy, which examines problems of legal regulation in the international system, issues of → arms control and → disarmament, and the diplomatic roles of the Secretary-General, the → United Nations Security Council and regional groups within the General Assembly. Since 1966, the Institute has published over sixty studies in the fields of peace and security, international organization and international development. It has also organized conferences and colloquia on subjects of international interest, such as → peaceful settlement of disputes over → marine resources, and the role of women in decision-making (→ Sex Discrimination).

(*c*) *Project on the Future*

In 1975 UNITAR launched the Project on the Future as a special programme for the continuing examination of major trends and developments whose implications for the future of mankind may require responses from the UN system. The Project on the Future is organized around two major themes: policy choices related to the implementation of the new international economic order, and the meaning of physical limits and supply constraints in energy and neutral resources (→ Environment, International Protection).

In the area of policy choices, a UNITAR study analysing five previously published world models for future development within the context of the new international economic order has been issued. In studying regional approaches to the future, the Institute has organized a conference on Africa and the future, in collaboration with the African Institute for Economic Development and Planning at Dakar, Senegal (→ Regional Cooperation and Organization: African States). A similar conference has been held on alternative development strategies for Asia at New Delhi, India (→ Regional Cooperation and Organization: Asian States).

In the field of energy and natural resources, the Project on the Future has organized six major conferences: on the future availability of petroleum and gas as national resources, on microbial energy conversion, on alternative strategies for desert development and management, on small-scale mining, on heavy crude oil and tar sands, and on long-term energy resources. The results of these conferences are being published and widely disseminated.

4. *Current Status*

UNITAR, which is aimed at achieving a better understanding of the problems of international cooperation and in particular those regarding the UN system, plays an extremely important role. After some 15 years of existence, there is general agreement that UNITAR has made an appreciable contribution in this area. However, the field of → international relations is an extremely vast one. UNITAR's activities are financed solely by

voluntary contributions; its current budget does not permit complete coverage of this area. Also, other institutes which are equally competent in the same area exist, both on the national and regional levels, and even within the UN system itself (→ United Nations University, for example). For these reasons, UNITAR will certainly be constrained in future to narrow its field of activity in a manner which corresponds to its limited financial means and to devote itself to those special areas in which it has a demonstrated record of expertise.

R. S. JORDAN, UNITAR and UN Research, International Organization, Vol. 30 (1976) 163–171.

ISSA DIALLO

UNITED NATIONS RELIEF AND REHABILITATION ACTIVITIES

1. United Nations Framework

The activities of the → United Nations in the fields of relief and rehabilitation frequently originate with, and are commissioned by, resolutions of the → United Nations General Assembly, and constitute a special concern of the → United Nations Economic and Social Council. Vast relief programmes have been initiated and implemented by various organs such as the United Nations Relief and Rehabilitation Administration (UNRRA, 1943–1948), by temporary → United Nations Specialized Agencies such as the → International Refugee Organisation (IRO, 1948–1952; → Refugees), by permanent Specialized Agencies such as the → Food and Agriculture Organization and the → World Health Organization, as well as by subsidiary organs of the UN General Assembly such as the Office of the High Commissioner for Refugees (UNHCR; → Refugees, United Nations High Commissioner), the Office of the United Nations Disaster Relief Co-Ordinator (UNDRO), the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), the → United Nations Development Programme (UNDP), the → United Nations Industrial Development Organization (UNIDO), and the → United Nations Children's Fund (UNICEF). This article focuses on the activities of UNRRA.

2. Establishment of UNRRA

As early as 1941, the leaders of the anti-Hitler coalition started to survey the problems that would follow the defeat of the Axis Powers (→ Atlantic Charter). But in view of the need to make timely preparations for post-war relief, and long before the world organization actually existed, the representatives of 44 "United Nations" met in Washington on November 9, 1943 and signed an agreement on the establishment of a special relief agency, which they called the United Nations Relief and Rehabilitation Administration. Four more States subsequently acceded.

In the → preamble of the UNRRA Agreement the participating States declared their determination that:

> "immediately upon the liberation of any area by the armed forces of the United Nations or as a consequence of retreat of the enemy, the population thereof shall receive aid and relief from their sufferings, food, clothing and shelter, aid in the prevention of pestilence and in the recovery of the health of the people, and that preparation and arrangements shall be made for the return of prisoners and exiles to their homes and for assistance in the resumption of urgently needed agricultural and industrial production and the restoration of essential services."

3. Operational Structure and Finances

(a) Director-General and governing bodies

UNRRA's policy-making plenary body was the Council, which consisted of one representative from each member government or authority. It was to be convened in regular session at least twice a year, but it only met on six occasions. Policy decisions of an emergency nature between sessions of the Council were made by the Central Committee, which at first consisted of representatives of China, the Soviet Union, the United Kingdom and the United States, with the non-voting Director-General presiding. At the third Council session the original membership of four was increased to six by the addition of Canada and France; at the fourth session Australia, Brazil and Yugoslavia increased membership to nine.

One of the powers of the Committee was to nominate, by unanimous vote, the Director-General, who was then elected by the Council. The authority of the Committee eventually grew beyond that originally granted in the Agreement. Ultimately, the Council delegated to the Committee all its powers (Res. 115) and on June 16, 1947 the Committee decided that no seventh Council session would be held.

An elaborate system of committees made up of representatives of member governments was established by the first Council, including regional committees for Europe and for the Far East, a Committee on Supplies, a Subcommittee of the Committee on Supplies, a Committee on Financial Control, an Audit Subcommittee, a Program Subcommittee, and five standing technical committees to deal with agriculture, displaced persons, health, industrial rehabilitation and welfare.

(*b*) *Headquarters and missions*

At the peak of operations in mid-1946 the administration of UNRRA included five types of offices and missions with a staff totaling nearly 25 000.

UNRRA's headquarters were located in Washington. The European Regional Office in London administered and supervised all offices, missions, and displaced persons operations in Europe and the Middle East. Twenty-nine servicing offices and missions scattered throughout the world provided governments with services in health, welfare, and displaced persons operations, and expedited UNRRA shipments. The most important of these were the China mission with its headquarters in Shanghai and a liaison office in Nanking, the Southwest Pacific Area Office in Sydney and the Cairo Mission. Sixteen missions to receiving countries advised the governments on the use and distribution of supplies. The Displaced Persons Operations in Germany, with offices at Arolsen and in the three western zones of occupation (→ Germany, Occupation after World War II), dealt with the care and repatriation of displaced persons in cooperation with the military authorities (→ Military Government) and under the supervision of the European Regional Office.

(*c*) *Finances*

UNRRA's activities (1943–1949) were financed by the 48 member governments (totalling over $3.6 thousand million) and by contributions received from other sources (valued at almost $212 million), including organized collections (primarily used clothing and canned food) in member countries, from non-member governments and from private organizations. The combined contributions of the United States amounted to a value of over $2.8 thousand million. Other major contributors were the United Kingdom, Canada and Australia, in that order. The bulk of contributions were made in commodities (grain, textiles, farm machinery, fuel) and only about one-tenth in currency.

UNRRA's operations were, however, gravely endangered by the fact that many member governments had failed to provide their contributions on time. This led the UN General Assembly to adopt a resolution on February 1, 1946 establishing a committee to assist UNRRA in obtaining the outstanding contributions.

4. *Relief and Rehabilitation Activities*

(*a*) *Geographical scope*

UNRRA was set up primarily to aid those liberated countries which requested aid and which lacked adequate foreign exchange to finance the importation of supplies (→ Economic and Technical Aid; → Economic Law, International). Several liberated countries in Europe, including France, Belgium, the Netherlands, Luxembourg, Denmark and Norway, never asked for UNRRA aid. Among the recipients of UNRRA aid were Albania, Austria, Byelorussia, China, Czechoslovakia, the Dodecanese Islands, Ethiopia, Finland, Greece, Hungary, Italy, Korea, the Philippines, Poland, San Marino, the Ukraine and Yugoslavia.

As an operating organization of 48 governments, UNRRA had to respect their sovereign rights (→ Sovereignty); its activities in any one country were thus preceded by the signing of a special agreement (→ International Organizations, Treaty-Making Power). In occupied Germany, the organization signed agreements with the American, British and French military governments; UNRRA did not operate in the Soviet zone.

(*b*) *Shipments*

UNRRA's final operational report of March 1948 indicates that commodity shipments amounted approximately to $2.9 thousand million, principally for food, clothing and footwear, the provision of medical and sanitation services, agricultural and industrial rehabilitation. The principal recipients were China ($518 million), Poland ($478 million), Italy ($418 million), Yugoslavia ($416 million), Greece ($347 million), Czechoslovakia ($261 million) and the Ukraine ($188 million).

(*c*) *Displaced persons*

When World War II ended, there were in Europe alone an estimated eight million displaced nationals of the Allied powers, many of whom had been voluntarily or involuntarily brought to Germany to work in her war industries (→ Forced Labour). The huge task of caring for them and or repatriating them was undertaken by the Allied armies with the assistance of UNRRA (→ Repatriation). By the end of September, 1945, some seven million had been repatriated. Through special agreement with the military authorities, UNRRA subsequently assumed the major responsibility for the displaced persons and refugees, and repatriated an additional 1 047 282 persons by June 1947, of whom 569 727 were Poles. UNRRA's major operations in this field were in Germany, but they also cared for displaced persons in Austria, Italy, the Middle East and China. UNRRA also provided aid to many thousands who did not wish to return to their countries of origin. With the cooperation of the International Committee of the → Red Cross, UNRRA endeavoured to resettle these persons elsewhere. This policy led to heated debate during the third Council session in August 1945, because the Eastern European nations objected to the giving of any aid whatsoever to displaced persons who refused repatriation.

(*d*) *Eligibility for aid*

The entitlement of a person to receive UNRRA care was determined by the Council of UNRRA in a succession of resolutions: nationals of the Allied powers, → stateless persons, and Italian nationals, if they had been displaced by the war; and nationals of other countries if they had been compelled to leave their former residences by action of the enemy because of their race, religion (→ Racial and Religious Discrimination) or activities in favour of the Allies. Nationals of former enemy States (→ Enemies and Enemy Subjects; → Nationality) were not eligible for aid, thus excluding the largest group of persons displaced by the war and those displaced pursuant to Art. 13 of the → Potsdam Agreements on Germany (1945): the 14 million Germans expelled from the German provinces east of the → Oder-Neisse line, from the Sudetenland (cf. → Munich Agreement (1938)) and from other parts of Eastern Europe (→ Population, Expulsion and Transfer).

During the first period of operations (March-October 1945) UNRRA employees were for all practical purposes agents of the military authorities and they were assigned to refugee camps, where scant consideration was given to whether the residents of such camps were or were not eligible in UNRRA terms. Later on, problems of eligibility did arise with respect to discharged soldiers and → prisoners of war, post-hostility refugees, the German Balts and the *Volksdeutsche*. The German Balts had formed the German-speaking → minorities in Estonia, Latvia and Lithuania (→ Baltic States), but only the other nationals of these countries were considered eligible for UNRRA assistance. The *Volksdeutsche* – German-speaking groups in Czechoslovakia, Poland, Hungary, Yugoslavia, and elsewhere – were or had been nationals of Allied countries. While aid to them might have been within the letter of the UNRRA mandate, it was formally determined by UNRRA in European Region Order 40 K of August 14, 1946, that they would not be eligible for assistance. This policy was later also followed by the IRO.

Although not initially foreseen, aid was given to Allied soldiers who did not wish to return to their countries of origin, and to prisoners of the Allied powers, insofar as the recipient had not been a war criminal (→ War Crimes) or a traitor, was not a *Volksdeutscher* or German Balt and had been compelled against his will to enter the German armed forces (Central Headquarters, Germany, Eligibility Order 52 of June 24, 1946).

A major burden on UNRRA's finance were the large numbers of Polish, Yugoslavian, Hungarian,

Bulgarian and Romanian refugees who fled their countries after the war and moved to Germany, Austria, or Italy and there claimed displaced-person status. The great majority of them were Jews. In a ruling of December 1945, UNRRA invoked the doctrine of "internal displacement", making the victims of persecution and of "discriminatory Nazi legislation" eligible, whereas post-hostility political refugees were not (Council IV, Doc. 89; European Region Order 40 I, July 3, 1946).

5. Assessment

UNRRA was the largest international relief operation in history. Doubtless, it helped save hundreds of thousands, perhaps millions of lives by distributing 24 106 891 gross long tons of commodities to desperately needy countries in the months immediately following their liberation.

Unlike the UN, which was created to be permanent, UNRRA was set up to handle an emergency, and, after largely fulfilling its tasks, UNRRA gradually closed its world-wide offices and terminated its operations on September 30, 1948. The continuing problems of old and new refugees, and other long-term programmes in the fields of relief and rehabilitation were taken up by several permanent Specialized Agencies and organs of the UN General Assembly.

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ALFRED M. DE ZAYAS

UNITED NATIONS SECRETARIAT *see* United Nations Secretary-General; International Secretariat

UNITED NATIONS SECRETARY-GENERAL

1. Historical Background

(a) The League of Nations; ILO

The immediate antecedent of the office of Secretary-General of the → United Nations is the Secretary-General of the → League of Nations. The League Secretary-General was the chief administrative officer of that organization and acted in the capacity of Secretary-General in all League organs. The first Secretary-General of the League, Sir Eric Drummond (Secretary-General 1919–1933), was the principal creator of the → international secretariat, professionally responsible not to the States of which secretariat members were nationals but only to the organization (→ Civil Service, International). Unlike the UN Secretary-General, the League Secretary-General was given virtually no political authority either by the terms of the League Covenant or by resolutions (→ International Organizations, Resolutions) adopted by League organs. In fact, however, Drummond and, to a lesser extent, Joseph Avenol (Secretary-General 1933-1940) exercised considerable political influence behind the scenes, as promoters of League activities and conciliators in international disputes (→ Conciliation and Mediation). Publicly, the Secretaries-General of the League avoided all political initiative. This was in marked contrast to the colourful leadership of the → International Labour Organisation by its first Director, Albert Thomas, and successor ILO Directors-General. If the office of Secretary-General of the League of Nations may be viewed as the prototype of the office of Secretary-General of the United Nations, then the office of Director-General of the ILO may be viewed as its archetype albeit in a more specialized and politically less volatile sphere.

(b) Early concepts; San Francisco conclusions

The drafters of the League Covenant initially conceived of a politically powerful Secretary-General, but abandoned the idea when the man in mind for the position, Sophocles Venizelos, declined to accept it. In early United States planning for the United Nations, President Franklin D. Roosevelt reportedly contemplated a politically powerful Secretariat chief who would have been entitled "The World's Mediator". In fact, the relevant United States proposals at the → Dumbarton Oaks Conference provided for little more than did the League Covenant. However, the British delegation at Dumbarton Oaks proposed what later came to be Art. 99 of the

→ United Nations Charter, the principal explicit and implicit source of the Secretary-General's political authority.

At the San Francisco Conference on International Organization, the Dumbarton Oaks proposals for the Secretariat were substantially accepted. An attempt to dilute the Secretary-General's sole immediate authority over the Secretariat was rejected with the defeat of a proposal that the → United Nations General Assembly elect Deputy Secretaries-General.

2. Election; Authority; Staff

Art. 97 of the Charter provides that the Secretary-General shall be appointed by the General Assembly "upon the recommendation of the Security Council". Since that recommendation is subject to the → veto, this provision ensures that the Secretary-General will take office with the support – at least initially – of the five permanent members of the → United Nations Security Council, as well as a majority of the membership. By resolutions of the General Assembly, the Secretary-General's term of office has been set at five years.

By the terms of Art. 97, the Secretary-General is designated "the chief administrative officer of the Organization". Pursuant to Art. 98, he acts in that capacity in all meetings of principal UN organs (except for the → International Court of Justice, which appoints its own Registrar). The Secretary-General appoints the staff under regulations established by the General Assembly (Art. 101). The exclusively international responsibilities of the Secretary-General and the staff (Art. 100) also imports that the Secretariat is professionally responsible to the Secretary-General alone.

Under Art. 98, the Secretary-General, in addition to acting in that capacity at meetings of UN organs, "shall perform such other functions as are entrusted to him by these organs". In practice, resolutions and understandings delegating authority to the Secretary-General are frequent, usually in administrative and technical but sometimes in other spheres.

Art. 99 provides that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security (→ Peace, Threat to). The Secretary-General is thereby endowed with an explicit, independent political authority; it is "his opinion" which determines whether the world's principal organ for preserving the peace shall address a particular matter. Moreover, Art. 99 implies certain powers (→ International Organizations, Implied Powers). The Secretary-General clearly may, on his own authority, investigate matters in order to decide whether he should exercise his powers under Art. 99. It has even been maintained that Art. 99 entitles the Secretary-General to take steps – such as the establishment of a "UN presence" in a troubled area – which may obviate the need for him to invoke Art. 99 (→ United Nations Peacekeeping System).

The Secretary-General acts personally and through his executive office, and through the Deputy Secretaries-General, Assistant Secretaries-General, Directors and other members of the staff of the Secretariat.

3. Activities

(a) Administrative

A primary activity of the Secretary-General is the supervision of a staff of thousands drawn from virtually every country. There is a certain tension between achieving the highest standards of efficiency, competence and integrity and paying due regard to recruiting the staff on as wide a geographical basis as possible. Political pressures from some countries in the appointment of staff have been considerable, accentuated by the insistence of some members that their nationals, nominated by their → governments rather than recruited directly by the Secretariat, serve only on fixed-term contracts. The Secretary-General remains responsible for ensuring that all officials, whether career or fixed-term, act as international officials responsible only to the Organization. The bulk of the routine activity of the Secretariat consists in servicing other organs of the Organization, arranging meetings, providing translation services, preparing supportive and statistical studies, and the like. The Secretariat also has operational responsibilities in fields such as technical assistance to → developing States (→ Economic and Technical Aid) and aid to children (→ Children, International Protection) and → refugees.

(*b*) *Assignments under Art.* 98

It is common practice for UN organs, such as the → United Nations Economic and Social Council, to instruct the Secretary-General to convene a conference (→ Congresses and Conferences, International) or prepare certain publications. On occasion, however, the Secretary-General may be given significant, specific political assignments. For example, on May 26, 1982 the Security Council, by Resolution 505, requested Secretary-General Javier Pérez de Cuéllar to use his good offices in the → Falkland Islands dispute.

In 1954, the General Assembly requested the Secretary-General to seek the release of 11 airmen and all other captured UN personnel held by the government of the People's Republic of → China (UN GA Res. 906 (IX); cf. → Korea). Secretary-General Dag Hammarskjöld (Secretary-General 1953–1961) proposed to Chinese Foreign Minister Chou En-lai that he visit Peking to take up the matter. Chou En-lai agreed to receive Hammarskjöld, who visited Peking in January 1955. Aware that the Chinese Government, then excluded from the General Assembly, was critical of its condemnatory resolution calling for the release of the airmen, Hammarskjöld explained that he was acting in discharge of his constitutional responsibilities to reduce international tension in pursuance of Charter purposes which were applicable to UN members and non-members alike. He noted that the legal basis for his visit (a visit which the General Assembly's resolution did not specify) was not that resolution but his right of independent intervention under the Charter. Hammarskjöld's exchanges with Chou En-lai led to the release of the airmen in August 1955. The Chinese Government specified that the release was a response to Hammarskjöld's efforts and not to the General Assembly's resolution.

A particularly far-reaching delegation of authority to the Secretary-General is exemplified by the General Assembly's Resolution 998 (ES-I) of November 4, 1956, by which it requested, "as a matter of priority, the Secretary-General to submit to it within forty-eight hours a plan for setting up, with the consent of the nations concerned, of an emergency international United Nations Force to secure and supervise the cessation of hostilities" in the → Suez Canal area (→ United Nations Forces). The Secretary-General rapidly made proposals, accepted by the General Assembly, for the mission, character, composition, command and legal authority of the United Nations Emergency Force and took the initiative in recruiting national contingents for it. In remarkably short order, a force was fielded which not only permitted the United Kingdom, France and eventually → Israel to withdraw their forces from Egypt, but which also played a critical role in maintaining relatively pacific relations along the Egyptian/Israeli frontier for a decade (→ Israel and the Arab States).

Building upon this precedent, the Security Council, by its Resolution 138 (1960) of July 14, 1960, authorized the Secretary-General to provide the Government of the Congo with → military aid. This resolution was the foundation of an immense UN effort (including the force set up for the Opérations des Nations Unies dans le Congo) to preserve the → territorial integrity and political independence, and modern infrastructure, of the Congo, in which the Secretary-General took a contentious lead.

(*c*) *Initiatives under Art.* 99

Explicit invocations by the Secretary-General of his authority under Art. 99 to bring threatening matters to the attention of the Security Council have been rare. Secretary-General Trygve Lie (Secretary-General 1946–1953) relied upon Art. 99 in addressing the Security Council at the outset of its consideration of the attack on the Republic of Korea in June 1950. Hammarskjöld invoked Art. 99 to bring the situation in the Congo before the Council in 1960. He also cited his obligations under Art. 99 when he appealed to the Security Council in July 1961 to adopt a resolution calling for a cease-fire (→ Suspension of Hostilities) and withdrawal of forces in Bizerte. Secretary-General Kurt Waldheim (Secretary-General 1971–1981) invoked Art. 99 when he brought the Iranian hostages affair before the Security Council in 1979 (→ United States Diplomatic and Consular Staff in Tehran Case). There are cases in which, for various reasons, States may be reluctant to bring a situation to the Security Council which nevertheless belongs before it. Art. 99 has proven its value in this regard.

4. *Special Legal Problems*

(a) *Scope of appointive and administrative authority*

While, subject to regulations adopted by the General Assembly, the Secretary-General alone is responsible for the appointment – and discharge – of the staff, practice has been mixed. States characteristically play a role in the appointment of senior staff, a role which in the case of the Soviet Union and like-minded States is determinative. In the 1950s, the United States brought pressure upon the Secretary-General to discharge staff members of United States nationality accused of Communist connections. The antagonism of some UN members to the concept of an independent, career international civil service, and, in some measure, insistence upon ever-wider geographical distribution in staff appointments, have tended to weaken the Secretariat's efficiency and exclusively international responsibility.

The Secretary-General endeavours to carry out the instructions of UN organs regardless of whether those instructions are regarded by some members as illegal. This has led to differences between the Secretary-General and certain members, among them, the Soviet Union, South Africa, France and Israel.

(b) *Scope of delegated authority*

In the Congo case, the Security Council and General Assembly invested the Secretary-General with wide authority which they proved unable or unwilling to clarify when some specific problems arose. The Secretary-General maintained that, in such circumstances, it fell to him to take the requisite decisions, a position which a minority of members attacked.

(c) *Scope of authority under Art. 99*

At the outset of the UN's history, Secretary-General Lie asserted that, should the Security Council decide not to send an investigatory commission to Greece (→ Fact-Finding and Inquiry), the Secretary-General reserved his Charter rights to conduct investigations on his own authority. The Security Council did not challenge that assertion. Subsequent Secretaries-General have reaffirmed an independent authority to investigate matters which might lead to the invocation of Art. 99.

Further, Hammarskjöld maintained in the case of Laos in 1959 that the Secretary-General could not only investigate a situation, but also establish a UN presence in a troubled country under his exclusive authority, in view of the responsibilities of the Secretary-General regarding developments which may threaten peace and security. Despite Soviet criticism, such a UN presence was established in Laos.

(d) *The challenge of the "Troika"*

Frustration of Soviet efforts to outflank the UN operation in the Congo, in which Hammarskjöld and his senior colleagues played a leading role, led to a violent and sustained Soviet attack in 1960 on Hammarskjöld's objectivity. The Soviet Union demanded his resignation which, to the unprecedented cheers of the General Assembly, he refused to tender. Soviet Premier Krushchev, the chairman of the Soviet delegation, pressed an attack on the institution of the Secretaryship-General itself, proposing that that office be abolished and replaced by a triumvirate ("troika") representing the Western powers, the East-bloc States and the neutralist countries. This unconstitutional proposal for the destruction of the office of Secretary-General and of a Secretariat responsible to the Organization alone aroused virtually no support and was forgotten with Hammarskjöld's tragic death and succession by the less innovative U Thant (Secretary-General 1961–1971). Nevertheless, the Soviet Union has persisted over the years and with some success, in seeking to constrict the authority of the Secretary-General, particularly in peacekeeping operations.

5. *Evaluation*

The Secretary-General has played a significant political, as well as a predominant administrative, role in the life of the UN. With the decline of the authority of the UN, however, the influence of his office has necessarily suffered. The Charter authority and precedents which could support a future revival and growth of genuine political influence exist. But whether member States will manifest, through their choice of Secretaries-General and their attitudes towards his activities, support for a renewal of his influence is unclear.

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STEPHEN M. SCHWEBEL

UNITED NATIONS SECURITY COUNCIL

1. Composition; Subsidiary Bodies

The Security Council is composed of the representatives of 15 member States of the → United Nations. The → United Nations Charter has retained the distinction between permanent members and other States which existed in the Council of the → League of Nations. The leading nations of the military alliance that defeated the Axis Powers became the five permanent members: → China, France, the United Kingdom, the Soviet Union and the United States. Until 1965 there were six elected members, this number being raised to ten by a 1963 amendment to the Charter (UN GA Res. 1991 (XVIII); → Treaties, Revision). According to a resolution of the General Assembly, these ten places are to be distributed as follows: one for Eastern Europe; two for Latin America; two for Western Europe and other States including Canada, Australia and New Zealand, and five for Asian and African States. The non-permanent members are elected by the → United Nations General Assembly for two-year terms and are not eligible for immediate re-election.

Under Art. 31 of the Charter, a UN member which is not a member of the Council may participate, without vote, in the discussion of any question when the Council considers that the interests of that member are especially affected. Also, a State party to a dispute under consideration by the Council must be invited to participate, without vote, in the discussions relating to the dispute.

The Security Council has three standing committees: the Committee of Experts (which examines provisional rules of procedure and other matters assigned by the Council); the Committee on Council Meetings away from Headquarters, and the Committee on the Admission of New Members. It also maintains *ad hoc* bodies created to deal with specific problem areas, such as the Special Committee against → Apartheid, which also reports to the General Assembly. Other subordinate bodies include the various peacekeeping operations and special missions (see section 3 *infra*). The Security Council also exercises functions relating to defence and security matters of UN trust territories which have been designated as → strategic areas under Arts. 82 and 83 of the Charter (→ United Nations Trusteeship System).

2. Powers and Functions

Under Art. 24(1) of the Charter, the Security Council is charged with the primary responsibility for the maintenance of international peace and security. To this end, the UN members agreed, in Art. 25, "to accept and carry out the decisions of the Security Council in accordance with the present Charter".

The main functions of the Security Council in discharging its primary responsibility for the maintenance of international peace and security are: (a) the → peaceful settlement of disputes, or peacemaking, regulated in Chapter VI of the Charter; (b) action with respect to threats to the peace (→ Peace, Threat to), breaches of the peace (→ Use of Force) and acts of → aggression, and peace enforcement; this function being governed by Chapter VII; and (c) provisional measures for peacekeeping or for prevention of an aggravation of conflict situations, this function being referred to in Art. 40 of the Charter (→ United Nations Peacekeeping System).

In order to exercise these functions promptly, the Council is so organized as to be able to

operate continuously, and a representative of each of its members must be present at all times at the UN Headquarters. The Council may meet elsewhere than at Headquarters.

3. Activities

(a) Peace enforcement

The Charter empowers the Security Council to determine the existence of a threat to peace, a breach of the peace or an act of aggression, to identify the aggressor and recommend or decide the application of diplomatic, economic or military → sanctions. Such decisions are binding on all members. However, by granting a right of → veto to the five permanent members, the Charter introduced a fundamental limitation from the start: Any attempt to apply sanctions to a permanent member was renounced deliberately and in advance. This was justified by the realistic argument that to undertake enforcement action against a → Great Power would not be to maintain peace but to start a third world war. But the rivalry between the Great Powers, particularly the two superpowers, and the consequent formation of opposing blocs of States, gave this system of impunity too large a scope. No State can place reliance on a security system in which the right of veto may be used by a Great Power, not merely to protect itself, but also to protect an allied (→ Alliance) or client State against a finding that it has committed a breach of the peace or an act of aggression.

Another consequence of the divisions between the permanent members together with their blocs has been that the agreements foreseen in Art. 43, designed to place armed forces at the disposal of the Council, have not been concluded. This signifies that the Security Council is unable to exercise the peace enforcement functions envisaged in Art. 42 of the Charter.

On the other hand, the Security Council has occasionally been able to order economic and diplomatic sanctions under Art. 41 of the Charter. It instituted a sort of economic → boycott calling upon all States to sever all relations, diplomatic and economic and to interrupt all transport links with the Smith régime in Southern → Rhodesia (UN SC Res. 232(1960) of December 16, 1966; 253(1960) of May 29, 1968 and 277(1970) of March 18, 1970). Also, the Security Council voted unanimously, on November 4, 1977, to impose a mandatory arms → embargo against South Africa, under Chapter VII of the Charter in connection with that country's continued occupation of → Namibia (UN SC Res. 418(1977)).

(b) Peacemaking

Under Chapter VI of the Charter, the Security Council is not expected to act as an arbitrator or a judge but to recommend, taking into account the nature of each dispute, what it considers to be the most appropriate method of peaceful adjustment, that is to say, the one most likely to bring about the settlement of the dispute. Only when a dispute has deteriorated to the point of being "in fact likely to endanger ... peace", or when both parties so request, does the Security Council become authorized under the Charter to recommend the actual terms for settling the controversy.

In particular, Art. 36(3) of the Charter is based on the assumption that in respect of legal disputes the Security Council would act, not as a judge, but as a sort of "praetor" separating the adversaries and directing them before a "judex" for a detailed examination of their claims and a decision in conformity with international law (→ Judicial Settlement of International Disputes).

Only once, however, in the → Corfu Channel Case, has the Security Council followed this "general rule". And even then the Council made its recommendation to the parties to bring their dispute to the → International Court of Justice only after failing in an attempt to receive and evaluate evidence and to make certain findings of fact as if it were a tribunal.

(c) Peacekeeping

In cases of disputes accompanied by hostilities (→ Armed Conflict), or when hostilities are imminent, the Security Council has followed a general pattern of action, established earlier by the Council of the League of Nations, which consists of taking measures designed to end or ward off hostilities, leaving to a later stage the consideration of the claims of the opposing parties. The Security Council has thus been able to concern itself exclusively with the initial problem of separating the belligerents and avoiding further

bloodshed, without prejudice to the rights or claims of either party.

The measures adopted for this purpose are an appeal addressed by the President of the Council, a cease-fire order, an order for the withdrawal of forces, the establishment of a truce (→ Suspension of Hostilities) or the conclusion of an → armistice agreement.

The most important and recent step in this connection has been the acceptance by the Security Council of the practice, inaugurated by the General Assembly, of dispatching peacekeeping forces of a military character under its authority but without a combat or fighting role. These forces, voluntarily contributed by member States, are designed to establish a buffer zone between the belligerents (→ United Nations Forces).

4. Special Legal Problems

(a) Scope and interpretation of Art. 25

In the 1971 Namibia advisory opinion (→ South West Africa/Namibia (Advisory Opinions and Judgments)) the ICJ had occasion to pronounce upon the scope of Art. 25. South Africa contended that it only applies to enforcement measures ordered under Chapter VII and that the Security Council may impose upon States the obligations to comply with its decisions only within the framework of action taken under Art. 41 or 42.

The Court rejected this view, asserting that Art. 25 is not confined to decisions in respect of enforcement action. After observing that this article is placed, not in Chapter VII, but immediately after Art. 24 in that part of the Charter which deals with the functions and powers of the Security Council, the Court stated that:

> "[i]f Article 25 had reference solely to decisions of the Security Council concerning enforcement action under Articles 41 and 42 of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter" (ICJ Reports (1971) p. 16 at p. 53).

This interpretation was criticized by the United Kingdom representative in the Security Council, who expressed the view that the Security Council could take decisions binding on member States "only if there had been a determination under Article 39" (UN SC Official Records, 1589th meeting, October 6, 1971, para. 53).

However, the Security Council has not found it indispensable in every case in which Art. 25 is applied to pass through the previous stage of a prior determination under Art. 39 (see, for instance, UN SC Res. 146 of August 9, 1960, UN Docs. S/4417/Add.3 and S/4452/Add.1).

There seems to be no reason why action under Art. 40 and peacekeeping operations authorized by the Security Council – neither of them requiring a previous determination under Art. 39 – should not have a binding effect whenever the Council, by invoking Art. 25, expressly intends to give those decisions such an effect. In the language of the Court: "To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter" (ICJ Reports (1971) at p. 54).

In the Namibia advisory opinion the Security Council had taken certain decisions and, in view of the divergent opinions of certain member States, requested the advice of the Court as to the legal consequences of its own decisions. This led the Court to examine and determine whether those decisions had been taken on the basis of Art. 25 and in accordance with Chapter I ("Purposes and Principles") and whether they were consequently binding upon members. This constituted an example of the collaboration between the political and the judicial organs in the implementation of Art. 25: A kind of judicial review was employed to ascertain the constitutionality of the action which had been taken by the Security Council.

(b) General and specific powers

It has been contended, again in the Namibia case, that in the light of Art. 24(2) of the Charter, the Security Council only has the specific powers granted to it in Chapters VI, VII, VIII and XII of the Charter (see the dissenting opinion of Judge Sir Gerald Fitzmaurice, ICJ Reports (1971) p. 208, at p. 292).

The Court did not share this view, finding that the specific powers conferred in those Chapters do not detract from the accompanying general powers which are granted to the Council out of the Charter by necessary intendment (→ Inter-

national Organizations, Implied Powers). The Court stated that "the reference in paragraph 2 of this Article to specific powers of the Security Council under certain chapters of the Charter does not exclude the existence of general powers to discharge the responsibilities conferred in paragraph 1" (ICJ Reports (1971) p. 16 at p. 52). A similar position has been expressed by the → United Nations Secretary-General in 1946 in a statement to the Security Council, based on the *travaux préparatoires* of the Charter (SC Official Records, 2nd year, No. 3, p. 44; → Interpretation in International Law).

Subsequent developments have confirmed that the Security Council has general powers in the field of peace and security, limited only by its duty to act in accordance with the purposes and principles of the Charter. Specifically, the establishment by the Security Council of peacekeeping forces demonstrates that this organ is not restricted to the specific powers granted in the Chapters of the Charter mentioned in Art. 24(2). The organization of peacekeeping operations is a development not contemplated in any express provision of the Charter.

With respect to the powers of the General Assembly in case of failure of the Security Council to exercise its primary responsibility for the maintenance of international peace and security because of the lack of unanimity of the permanent members, see → Uniting for Peace Resolution.

5. *Evaluation*

(*a*) *Peacemaking*

The record of the Security Council in the pacific settlement of disputes is a dismal one. The basic reason is that the political differences between the members of the Council generally frustrate efforts to resolve the differences between the parties to the controversy.

Another reason for the deficiency in the discharge of this function is the timidity shown by the Council when faced with exercising its powers as foreseen in the Charter. The Security Council shows as excessive deference to the wishes of each disputant party before making any recommendation as to methods of peaceful settlement. The consent of both parties to a particular method is not required by the Charter – as shown by the fact that under the proviso in Art. 27(3), no party to a dispute, not even a permanent member, is allowed to vote against or veto such a recommendation. The original system envisaged at San Francisco has been sacrificed in favour of the exaggerated respect paid to what has come to be described as the "free choice of means" of peaceful settlement. Such a free choice, transformed into a dogma derived from the principle of → sovereignty, and accorded to both parties to a dispute, leads in practice to a permanent deadlock which transforms the Charter duty of peaceful settlement into an imperfect obligation.

(*b*) *Peace enforcement*

With respect to peace enforcement, the possibility of military sanctions against aggression contemplated in Chapter VII has become a dead letter since no armed forces have been placed at the disposal of the Council. However, as shown in certain isolated instances, diplomatic and economic sanctions may still be imposed under Art. 41, but only in those rare cases when the Security Council is able to reach a consensus among its permanent members.

(*c*) *Peacekeeping*

This has been, despite a lack of compliance by certain States, the least unsuccessful of the Security Council's activities. The frequency of the resort to these functions in recent years, particularly to the establishment of peacekeeping forces, demonstrates that this activity has become a useful instrument for the containment of hostilities and the best contribution the Security Council is able to make to the discharge of its essential function: the maintenance of international peace and security. It is a more modest but more realistic contribution to that purpose; peacekeeping has thus replaced the idea of peace enforcement as defined in Art. 42 of the Charter, a function which appears increasingly impractical and even dangerous in the world of today.

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UNITED NATIONS, SPECIALIZED AGENCIES

I. NOTION AND FUNCTIONS

Specialized Agencies are international organizations specifically linked to the → United Nations. The → United Nations Charter (Art. 57) defines them as "specialized agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields", which have been "brought into relationship with the United Nations by agreement in accordance with the provisions of Article 63". This agreement, negotiated between the → United Nations Economic and Social Council (ECOSOC) and the agency concerned, is subject to approval by the → United Nations General Assembly (Art. 63(1)).

The functions attached to the Specialized Agencies by their constitutions encompass the wide range of purposes concerning international economic and social cooperation set forth in Arts. 1(3) and 55 of the Charter. By assuming such functions, the Specialized Agencies do not gain, however, any monopolistic control over the field in question. The UN itself, through its various organs and subsidiary organs, may at any time address the same problems, not to speak of the competences of the numerous other intergovernmental and → non-governmental organizations which are engaged in parallel activities. The danger thus created of overlapping competences and efforts calls for some kinds of coordination. For this reason, the UN Charter enables ECOSOC to exercise *vis-à-vis* the Specialized Agencies coordinating powers, the exact extent of which has to be fixed in the respective relationship agreements. In all cases, however, the key-question is one of autonomy: of how closely the Specialized Agencies are integrated into the general system of the UN and how much their participation in the "UN Family" affects their position as independent international organizations.

II. EVOLUTION AND BACKGROUND

The States which founded the UN and discussed the kind of relationship which the new world organization should develop with other already-existing or future international organizations in the social and economic sphere sought to make use of the lessons which the → League of Nations had had to learn in the two decades before World War II.

Although United States President Woodrow Wilson wished to restrict the functions of the League to peacekeeping matters only, Art. 24 was inserted into the Covenant, on the proposal of the British Government. This reads:

"(1) There shall be placed under the direction

> of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League .... (3) The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League."

It was expected that this provision might give the League the opportunity to profit from the experience in international cooperation which the → international administrative unions already in existence at that time had acquired. In the second half of the 19th century the first international administrative union, the International Telegraph Union (→ International Telecommunication Union) had appeared on the world scene (1865), soon followed by the → Universal Postal Union (1874), the → International Bureau of Weights and Measures (1875), the International Union for the Protection of Industrial Property (1885), (→ Industrial Property, International Protection) and many others. The forming of the international administrative unions or bureaux has to be seen as a common response of the civilized States to the challenges of the industrial revolution, particularly in the field of transportation (→ Traffic and Transport, International Regulation) and communication. In addition to organizing *ad hoc* international conferences (→ Congresses and Conferences, International) for the settlement of relevant problems, the administrative unions had the advantage of providing a permanent framework for the continuous treatment of the questions they were concerned with. By the time of the League's creation, more than 20 functional international bureaux of this type were in existence. If the League had succeeded in an extensive application of Art. 24, one could have expected that the League would consequently soon have played an important part in economic and social matters despite their virtual exclusion from the Covenant.

The implementation of Art. 24 failed, however, due to the uncooperative attitude of the administrative unions. This attitude resulted primarily from the decision of the United States not to become a member of the League and not to consent to collaboration by any international organization of which it was a member with the League. Under these circumstances, the unions for their part did not feel in the position to sacrifice the United States' membership for the vague benefits offered by the League. An additional reason for rejecting affiliation with the League was the apprehension of the agencies that the League might encroach upon their activities and autonomy and also that they could become involved in the political conflicts that prevailed within the League. Although the League attempted to arrive at an interpretation of Art. 24 which was attractive for the unions, the impasse could not be overcome. In the end only six agencies of minor importance became affiliated with the League (the International Bureau for Information and Enquiries regarding Relief to Foreigners, 1921; the → International Hydrographic Organization, 1921; the International Central Office for the Control of Liquor Traffic in Africa, 1922; the International Commission for Air Navigation, 1922; the Nansen International Office for Refugees, 1931 (→ Refugees, League of Nations Offices); and the International Exhibitions Bureau, 1931) while the other agencies continued as fully independent agencies.

In this context, the → International Labour Organisation (ILO) deserves special mention as the only agency of universal importance which was closely connected with the League. This, however, was not the result of Art. 24 of the Covenant but of Arts. 387 to 427 of the → Versailles Peace Treaty (1919). It was provided there, *inter alia*, that the ILO should be established at the seat (→ International Organizations, Headquarters) of the League "as part of the organisation of the League" (Art. 392) and that the expenses of ILO should be provided for by the League (→ International Organizations, Financing and Budgeting); the Director of the ILO was made responsible to the Secretary-General of the League for the proper expenditure of all monies paid to him in pursuance of Art. 399 of the Treaty. The ILO Director, for his part, had the right to participate in the relevant deliberations of the Council of the League. Although this arrangement as a whole had worked fairly effectively, it did not appear attractive enough to convince other agencies to affiliate with the League.

Despite these setbacks, the League, through its

own bodies, became more and more involved in economic and social fields. Its positive achievements and the development of the world economic situation between the wars, put, in contrast to the view that prevailed in 1919, the proposition that the post-war international system had to include a mechanism able to tackle economic and social problems beyond question. There was, however, a fundamental divergence of opinion concerning the organizational concept. While the one side advocated a single, centralized, unitary agency to carry out all international efforts in the economic and social field, the other side, influenced by the theory of functionalism (see section IV.L. *infra*), maintained that international cooperation in these matters might be achieved in a more efficient way by individual autonomous international organizations operating independently of, though coordinated in some way or another by a world organization. A particular concern was to keep these technical agencies free from politics in order to protect them from the risk of conflicts within the general organization spreading to them. Practice more than academic discussion decided the dispute in favour of functionalism. The necessity to relieve hunger in the world resulted in the creation of the → Food and Agriculture Organization (FAO) in 1943, which could, in the absence of a functioning general international organization, only be established as an entirely separate agency. Only shortly thereafter, → consensus was reached to create the United Nations Relief and Rehabilitation Agency (UNRRA), the → International Monetary Fund (IMF), the → International Bank for Reconstruction and Development (IBRD) and the → International Civil Aviation Organization (ICAO). Taken together with the position of older relevant agencies, the ITU, UPU and ILO, the San Francisco Conference (1945) had to face up to a development which could hardly be reversed. Chapters IX and X of the UN Charter therefore established a concept of decentralization, providing that inter-governmental agencies with responsibilities in economic, social and related matters should only be brought into a relationship with the UN by agreement, thus leaving the decision to acquire the status of a UN Specialized Agency to the free choice of the individual institution (Arts. 57 and 63). For those organizations which do so choose, the UN takes a general coordinating responsibility: According to Art. 58, "the Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies". It is ECOSOC which is the primary organ for discharging this responsibility: By Art. 63, ECOSOC "may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations", and according to Art. 62, ECOSOC may take recommendations with respect to the whole field of social, economic, cultural and related matters to the Specialized Agencies as well as to the General Assembly and the members of the United Nations; further, according to Art. 64, ECOSOC "may take appropriate steps to obtain regular reports from the specialized agencies", including reports on the steps taken by the Specialized Agencies to give effect to recommendations of ECOSOC and the General Assembly. According to Art. 17(3), the General Assembly "shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned". Regarding representation of the Agencies during ECOSOC's deliberations, ECOSOC may, according to Art. 70 "make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies". ECOSOC's role extends to assistance also: It "may, with the approval of the General Assembly, perform services... at the request of specialized agencies" (Art. 66). Lastly, under Art. 59, the UN "shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies ...".

These provisions are flexible enough to be implemented in either a more or a less UN-oriented way. That the second way was taken is probably due to the fact that the first relationship agreement (1946) was concluded with the ILO. This organization, which had just severed all ties with the League in order not to share its fate, did not want to lose its newly-obtained independence. Careful preparation on the side of the ILO led to the conclusion of an agreement which was seen by

the new Specialized Agency as extremely satisfactory. This set the standard for subsequent negotiations with other Agencies. Thus, a pattern of institutional autonomy evolved. This was underscored also by the relationship agreements concluded with the financial Agencies, the IBRD and IMF, and later on the → International Finance Corporation (IFC) and the → International Development Association (IDA), as these agreements explicitly limit the recommendatory power of the UN with regard to the specific financial activities of these Agencies (→ Financial Institutions, Inter-Governmental). Here features peculiar to the financial Agencies became apparent, which together with some other characteristics, justify examination of these institutions as a separate group within the Specialized Agencies system. The two latest relationship agreements, with the → World Intellectual Property Organization (WIPO) in 1974 and the → International Fund for Agricultural Development (IFAD) in 1977, conform generally to the established pattern but seek to stress the coordinating competences of the UN somewhat more, as is expressed in an article of the special agreement on "coordination and cooperation"; this corresponds to the intensified UN efforts to rationalize the whole economic and social sector of the UN system since the early 1970s. (See section IV.K. *infra*).

III. THE INDIVIDUAL SPECIALIZED AGENCIES

As of early 1982, there were 15 Specialized Agencies in existence (listed chronologically according to the dates of entry into force of the relationship agreements): → International Labour Organisation (ILO), → Food and Agriculture Organization (FAO), → United Nations Educational, Scientific and Cultural Organization (UNESCO), → International Civil Aviation Organization (ICAO), → International Bank for Reconstruction and Development (IBRD), → International Monetary Fund (IMF), → Universal Postal Union (UPU), → World Health Organization (WHO), → International Telecommunication Union (ITU), → World Meteorological Organization (WMO), → International Finance Corporation (IFC), → International Maritime Organization (IMO) (following the change in name in May 1982 of the Inter-Governmental Maritime Consultative Organization (IMCO)), → International Development Association (IDA), → World Intellectual Property Organization (WIPO), → International Fund for Agricultural Development (IFAD).

In 1979, the United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency adopted a new constitution for the → United Nations Industrial Development Organization (UNIDO) (in existence since 1967). This constitution provides in Art. 18 that UNIDO "be brought into relationship with the United Nations as one of the specialized agencies".

The → International Atomic Energy Agency (IAEA) is not a Specialized Agency in the proper sense of the notion, because the relationship agreement (November 14, 1957) was not concluded under Arts. 57 and 63 of the UN Charter; the agreement merely provides, according to the description of the functions of the Agency, for special cooperation with the → United Nations Security Council and General Assembly. In many respects, however, its situation is very similar to that of a Specialized Agency, and it has become usual, notwithstanding the formal differentiation, to deal with IAEA (115 members) alongside the Specialized Agencies.

The → Havana Charter provided for the establishment of an International Trade Organization (ITO; → World Trade, Principles) which was to have become another Specialized Agency. This end, however, was not achieved, as the Charter was never ratified; some parts of it were integrated instead into the → General Agreement on Tariffs and Trade (GATT; 1947).

The → International Refugee Organisation (IRO) represents the sole example of a Specialized Agency which has lapsed. Created in 1946 to solve the European → refugee problem, it was granted only a limited lifetime from the outset. It ceased to exist in 1952 (→ Refugees, United Nations High Commissioner).

IV. COMMON FEATURES

A. The Legal Basis

Two legal instruments are necessarily attributed to all Specialized Agencies: the founding inter-

governmental treaty ("constitution" or "constituent treaty") and the agreement joining the Agency to the UN system.

1. Constitutions

The basis of the existence and functioning of all Specialized Agencies rests on an international → treaty between → States (→ International Organizations, General Aspects). This treaty does not deal primarily with the rights and duties of the States parties, but regulates the establishment, membership (→ International Organizations, Membership), functions, and structure of the organization itself. The States parties receive by virtue of their membership status as parts of the organization. In this way, the founding treaty is very similar to a State's constitution, and, in fact, it is this appellation which has become familiar in practice (e.g. the "Constitutions" of the ILO, FAO, UNESCO, WHO, UPU, UNIDO), although other designations are still used (Agreement, Articles of Agreement, Convention).

All constitutions provide for their amendment with the sole exception of ITU where, however, the possibility of revising the basic Convention (→ Treaties, Revision) is implicit (Art. 3(h)). The amending procedures vary considerably, but all Specialized Agencies tally on the essential point that the plenary organ of the Agency is always in a prominent position in the amending process. The power to propose amendments belongs to the members, and sometimes also to organs of the agency. Amendments decided on by the plenary body require usually a two-thirds majority to be valid (→ Voting Rules in International Conferences and Organizations). However, in the case of the financial organizations, the approval of the Board of Governors is required with no special majority indicated; according to the Agreement establishing IFAD (Art. 12(a) (ii)), depending on the content of the amendment, a four-fifths majority of the total number of votes is required. To adopt an amendment, the approval of the plenary organ alone is sometimes not sufficient; the approval of the member States must then be obtained. This procedure usually applies to cases where new obligations for the members are created by the constitutional amendment. As regards the question of whether the binding effect of adopted amendments extends to members who were opposed to them (→ International Legislation), the constitutions of some Agencies expressly provide for this (the financial Agencies, WHO), while other constitutions hint to the contrary (FAO, WMO). Concerning ICAO and IMCO/IMO, the plenary body may provide that any State not ratifying within a specified period after the amendment has come into force shall thereupon cease to be a member. In practice there have been many constitutional amendments, partly with the intention merely to adapt a basic instrument to such developments as increases of membership or to enlarge the functions of the Agencies. On the whole it seems that the Agencies have held a reasonable balance between undue constitutional rigidity and excessive flexibility.

Most Agencies' constitutions do not deal with the question of reservations (→ Treaties, Reservations). As reservations are in principle not compatible with the nature of a treaty establishing an international organization, they can be deemed admissible only when accepted by the organization itself (cf. Art. 20(3) of the → Vienna Convention on the Law of Treaties). More recent constitutions (WIPO, Art. 16; UNIDO, Art. 27) strictly exclude any reservations, whilst in the case of IFAD (Art. 13, section 4) reservations may only be made to the constitutional provision on arbitration.

2. Relationship Agreements

Only by concluding an agreement of the type referred to in Arts. 57 and 63 of the UN Charter with the UN, may an international organization acquire the status of a Specialized Agency. In most cases, the organizations' constitutions contain express provisions charging the agency to enter into → negotiation with the UN with a view to concluding such agreements. The following procedure in the conclusion of agreements has normally been observed: ECOSOC adopts a resolution (→ International Organizations, Resolutions) directing its Committee on Negotiations to enter into negotiation with the Agency; the draft agreement resulting from such negotiations is submitted to ECOSOC for consideration and approval; the draft agreement is then submitted to the UN General Assembly and the plenary organ of the Agency; it enters into force on its approval by both of them. The exact

date is fixed in a protocol signed by the → United Nations Secretary-General and the appropriate official of the Agency. The agreement is registered (→ Treaties, Registration and Publication) with the UN Secretariat (→ International Secretariat) and published by it in accordance with Art. 102 of the UN Charter. As to their legal nature, these agreements must be qualified as treaties concluded between international organizations (→ International Organizations, Treaty-Making Power) having the character of → subjects of international law.

All relationship agreements follow a similar pattern though the order and the exact content of the articles differ from Agency to Agency. In a first article, the UN recognizes the organization as a Specialized Agency and as being responsible for taking action in accordance with its constitution. The main part of the agreement deals with the question how cooperation and coordination with the UN can be organized. To this end, other articles provide for the reciprocal representation in the respective organs, consultations and recommendations, the right to propose agenda items, the exchange of information and documents, statistical services, budgetary and financial as well as personnel arrangements (→ Civil Service, International), administrative cooperation, assistance to the UN, the jurisdiction of the → International Court of Justice, relations with other international organizations, and the use of the *laissez-passer* of the UN by the officials of the Agency. A further article provides for the implementation of the agreement by a supplementary arrangement entered into by the UN Secretary-General and the chief administrative officer of the Agency. The agreements are subject to amendment and revision by agreement of the parties.

B. Membership

1. General

The Specialized Agencies are characterized by a general tendency towards universality, though this aim has not yet been fully achieved and has even been partly impeded by the attempt to use the Agencies as weapons in the political conflicts within the United Nations (see section IV.L. *infra*). Just half of the Specialized Agencies have attained a membership comparable with that of the UN itself (ILO, FAO, UNESCO, ICAO, UPU, WHO, ITU, WMO). The largest Agency is UPU with 162 members, the smallest being WIPO, with 98 members (December 1980). Only about 40 UN member States are also members of all Specialized Agencies, amongst which figure most of the Western European States, the United States, Canada and Japan but no communist States, with the exception of Yugoslavia, as these States are opposed to the activities of the four financial Agencies (IBRD, IDA, IFC, IMF); the USSR belongs to neither FAO nor IFAD. States not members of the UN may nevertheless participate as members in the work of the Agencies (e.g. Switzerland: ILO, FAO, UNESCO, WHO, ICAO, UPU, ITU, WMO, IMCO/IMO, WIPO, IFAD, IAEA; the → Holy See is a member of UPU, ITU, WIPO and IAEA).

2. Acquisition of Membership

The acquisition of membership of the Specialized Agencies is regulated by their constitutions. These instruments distinguish between original and non-original members, the former being the signatory States or States belonging to another organization and which have accepted the constitution before a specified date. Concerning the non-original members, most constitutions distinguish again between: (a) member States of the United Nations or of another Specialized Agency or of the IAEA, and (b) other States. The former are automatically entitled to accede to the organization; the latter have to apply for membership. Accession and application for membership are usually to be addressed to the head of the executive of the Agency, but in the case of the UPU (Constitution, Art. 11) through diplomatic channels (→ Diplomacy) to the Swiss Government and by that Government to member countries. The application for membership has to be approved by a simple or two-thirds majority of the Agency's plenary body. Exceptional here is Art. II.2 of the Constitution of UNESCO which, in accordance with Art. II of the relevant relationship agreement with the UN, provides that ECOSOC may recommend rejection of the application and that any such recommendation is binding on the UNESCO.

Two peculiarities should still be noted. Accord-

ing to its special functions, WMO (Convention, Art. 3) restricts the membership of non-signatory States, even if members of the UN, to States which maintain their own meteorological service. Analogously, WIPO membership is open to any State which is a member of the Paris or the Berne Union or special units or agreements related to them (Art. 5).

3. Classification of Members

Besides the categories of original and non-original members which are of importance solely with respect to the acquisition of membership, only the agreement establishing IFAD (Art. 3, section 3) formally classifies its members into categories (I, II and III). This classification is set forth in schedule 1 of the agreement and groups members according to whether they give (I, II) or receive (III) financial aid from the Fund; it also plays an important role in the distribution of votes (see section IV.D. *infra*).

4. Associate Members

Several constitutions provide for associate membership (FAO, UNESCO, WHO, ITU, IMCO/IMO). This status may be acquired by any territory (or group of territories) not responsible for the conduct of its own → international relations (cf. → Non-Self-Governing Territories; → Foreign Relations Power) upon application by the member State having authority or by the UN (e.g. → Namibia holds this position with respect to WHO). Exceptionally, however, non-sovereign territories may even have the status of full members: this is the case with UPU (cf. Art. 23(5)). An associate member generally has the same rights and obligations as a member, except in the decision-making process, particularly regarding constitutional amendments (e.g. FAO, Art. II; ITU, Art. 2(2); IMCO/IMO, Art. 10).

5. Termination of Membership

(a) Most of the constitutions expressly permit the withdrawal from an Agency by → notification to its chief executive officer or by depositing the instrument of denunciation (→ Treaties, Termination) with the relevant → depository. The details differ: whilst, for example, the ILO Constitution (Art. 1(5)) requires notice of the intention to withdraw two years in advance, withdrawal from the IBRD (Art. VI, section 1) becomes effective immediately on the date such notice is received.

Withdrawal from Specialized Agencies has occurred fairly often in practice. A prominent case was the withdrawal of the United States from ILO in 1977, but the United States, along with 16 of the 19 States which had taken this step earlier re-acquired ILO membership in 1980. A legal controversy developed in the early 1950s when the East bloc countries left WHO and UNESCO. Their withdrawal was disputed by the other members and the organizations themselves as in both cases the basic instrument did not provide for denunciation. (Cf. → International Organizations, Membership.) The view of the organizations appears to have prevailed in practice. On the other hand, it is difficult to dispute in law the right to withdraw, if not expressly prohibited, so long as the member has no opportunity to defend itself judicially against real or supposed violations by the organizations (→ International Organizations, Responsibility; see section IV.F. *infra*).

(b) Sometimes, membership status within an Agency has been closely connected with membership in the UN. Art. II.4 and 5 of the UNESCO constitution provide that suspension from the rights and privileges of membership in the UN or expulsion therefrom result automatically in the same status within the Agency. Art. 93^{bis} of the ICAO constitution goes still further by attributing a recommendation by the UN General Assembly to debar a State from membership in international agencies, even without expulsion from the UN itself, with the automatic effect of the loss of ICAO membership. Art. 11 of the IMCO/IMO constitution contains a similar provision. An amendment to the WHO Constitution of 1965 (Art. 7), though not yet in force, gives the plenary organ the power to suspend or exclude a member deliberately practising a policy of → racial discrimination until the renunciation of this policy by the State concerned.

A further example of linking membership of one organization to that of another is that termination of membership of the IMF entails automatically cessation of membership in the World Bank Group unless the Bank agrees to allow the State to retain its rights. In other cases,

compulsory withdrawal may result from a suspension of membership rights following failure of a member to fulfil its obligations, unless the Agency decides to restore the member to good standing within a stipulated time-period (World Bank Group, IFAD).

6. *Participation of Non-Members*

Participation of non-members in the work of an institution may offer the latter extra knowledge and experience. Art. 4 of the new UNIDO Constitution opens observer status to all those enjoying such status in the UN General Assembly (→ International Organizations, Observer Status). Art. IV(E) of the UNESCO Constitution contains a similar provision. Non-members have no voting power.

C. Organs

1. *General*

The Specialized Agencies in most respects share a common organizational structure although differences at many points exist resulting from the various purposes of the organizations. Each Agency has a plenary body open to all its members, a council of limited membership as the central executive organ, and a secretariat which is charged with the day-to-day administration of the organization. Additionally, one may find, to varying extents, subsidiary organs and regional and technical commissions. The chief administrative officer is at the same time chairman of the executive organ, usually without, however, the right to vote; that person is sometimes designated president of the organization (World Bank Group, WMO, IFAD).

2. *The Plenary Organ*

The plenary organ (known variously as the General Conference, Assembly, Congress, Board of Governors, Governing Council) is the representative body of all the members and associate members. In this capacity it is the "supreme organ" (so called expressly in UPU and ITU constitutions) of the Agency. Consequently, it has the function of determining the policies and the main operational programme of the organization, to approve the budget (in case of ITU, to determine fiscal limits on expenditure), to decide on membership questions, to delegate powers to other organs, and to resolve on recommendations and conventions or agreements for submission to the member States. As membership of WIPO and of the Paris and Berne Unions is not necessarily identical, the WIPO Convention establishes two plenary organs, one (the General Assembly) representing the member States being members of any of the Unions, the other representing all signatories of the Convention regardless of their membership in the Unions (the Conference). Whilst the former organ, *inter alia*, appoints the Director General, adopts the budgets of the Unions and the financial regulations of the Organization, and invites States to become parties to the Convention, the latter discusses matters of general interest in the field of intellectual property and adopts amendments to the Convention.

The delegates to the plenary body are generally appointed by their respective governments. In some cases the constitutions provide for specific knowledge in the Agency's field of activity and therefore lay down certain pre-conditions for appointment (UNESCO, WHO). The IBRD Constitution limits the term of office of the members of the Board of Governors to five years, reappointment then being possible. As government officials the delegates are subject to the instructions of their governments. The size of the delegation varies from one to five members; alternate delegates or advisors are regularly admitted.

An interesting exception is provided by ILO. The delegations there are composed of four representatives each, of whom only two are government delegates, the other two representing respectively the employers and the labour force of each member country; these two other delegates must not be instructed by their national government.

3. *The Council*

The council, which has widely varying denominations (Council, Executive · Administrative Council, Board, Executive Board, Governing Body, Executive Directors, Board of Directors, Coordination or Executive Committee), carries out the directions of and is responsible for the execution of the programme adopted by the plenary body. According to the UPU

Constitution, the Executive Council's role is to assure the continuity of the work of the Agency (Art. 18) and under the IMCO Constitution the Council, between sessions of the plenary organ, is entrusted with the performance of all functions of the organization except that of making certain recommendations (Art. 27). A further typical task of the council is to prepare the agenda of the conference and to administer the finances of the organization; only the Council of ITU may by itself approve the budget after the limit has been fixed by the Conference (Art. 9 B para. 2 f).

The number of a council's members ranges from a minimum of 12 (IBRD, IMF) to 42 (FAO), 48 (ILO) and 53 (UNIDO). They are as a rule elected by the plenary organ. Some constitutions establish specific principles to be observed in this election, with the purpose of assuring that, besides the achievement of an equitable geographical distribution, the member States most interested and qualified in the field concerned will be sure to have a seat in this organ (e.g. IMCO/IMO, Art. 18; ICAO, Art. 50; IAEA, Art. VI(A)). Other criteria have been adopted by the IFAD and UNIDO Constitutions designed to secure a balanced composition on the respective Boards of member States belonging to the three or four categories provided for in the basic instruments.

Again, ILO offers a special case (Art. 7). Out of the 48 persons forming the Governing Body, 24 represent governments, of whom ten are appointed by member States of chief industrial importance and 14 are appointed by other members selected by the government delegates to the Conference. The persons representing the employers (12) and the workers (12) are elected respectively by these groups' delegates to the Conference. Also, five of the Executive Directors of IBRD are appointed by each of the five members having the largest number of shares.

The term of office amounts from three to five years in most cases. Immediate re-election or reappointment is usually, but not always, possible. The council meets at least once (WIPO) or twice a year (UNESCO, WHO) and in the case of IFAD as often as the business of the Fund may require. With respect to ICAO, the Council is expressly characterized as a permanent body. The chairman (president) of the council is elected either by the council members themselves or by the general conference. In the case of the IFC and IDA, the President of IBRD is *ex officio* chairman of the Executive Directors of both Agencies.

Although, with a few exceptions only, the council members are representatives of their respective governments, constitution articles provide that these persons shall nevertheless exercise their powers in the name and for the sake of the organization as a whole (UNESCO, Art. V(B 12); UPU, Art. 17).

4. The Secretariat

An organization cannot function without an organ which carries out the daily administrative duties (→ International Secretariat). This responsibility falls to the secretariat (variously designated Secretariat, Office, International Bureau) of the Agency, composed of the Director-General (also known as President, Secretary-General, Managing Director) and the other staff members. The director-general, who is often assisted by one or more deputy directors-general (or vice-presidents), is usually described as the "chief administrative officer" and it is he who represents the Agency externally. The importance of his position is underlined particularly in the FAO Constitution (Art. VII(4)), according to which he has, subject to the general supervisory authority of the Conference and the Council, full power and authority to direct the work of the organization. In order to fulfil his duties, the director-general has the right to participate in the meetings of the other organs, in some cases as their *ex officio* secretary.

The appointment procedure is not uniform. In some cases (FAO, ICAO, WMO, WIPO, IFAD), the director-general is appointed by the plenary organ, usually for a term such as it determines. In other cases (ILO, IBRD, IMF) the appointment is made by the council. Finally, still other constitutions provide for collaboration by both organs in the appointment: The head of the secretariat may be appointed by the plenary body upon recommendation by the council (UNESCO, WHO, UNIDO) or by the council (board) with the approval of the plenary body (IAEA). The term of office varies from three to six years.

As chief of the staff, the director-general is charged with the appointment and dismissal of

staff personnel. He is bound by regulations established by the plenary body or the council which correspond in general to the relevant rules within the United Nations; a far-reaching harmonization of rules regarding the international civil service (→ Civil Service, International) within the UN system has been achieved over the years. In this respect, the International Civil Service Commission has played an outstanding role. Its Statute was approved by the UN General Assembly in 1975 (Res. 3357 (XXIX)) and has been accepted by all the Specialized Agencies except the financial institutions and IFAD. The paramount considerations in the employment of staff, such as the necessity of securing the highest standard of efficiency, competence and integrity as well as recruitment on a broad and equitable geographical basis, are laid down in the constitutions themselves.

All constitutions emphasize that the responsibilities of the secretariat are exclusively international in character. The members of the secretariat are therefore called upon not to seek or to receive instructions from any national government and to refrain from any action which might reflect adversely upon their positions as international officials responsible only to their agency. This appeal to loyalty is accompanied by the obligation of the members of the Agency not to seek to influence the secretariat's officials in the discharge of their duties. The only formal exception to this strict separation of organizational from governmental functions is the UPU, where the Swiss Government has taken over several responsibilities regarding administrative and financial matters which, however, do not detract from the substantial independence of that Agency.

In conclusion, the increasing importance of the director-general should be emphasized. He processes all the relevant information on the work and interests of the Agency emanating from a sometimes very extensive bureaucracy behind him (e.g. IFAD: 120, ICAO: 1200, WHO: 5376, FAO: 6637; cf. UN Doc. A/36/181). By laying the groundwork for the work of the other organs and by his presence at all of their deliberations, he dissociates himself from the role of a purely administrative functionary. Interestingly enough, Art. 36 of the IMCO Convention (renumbered Art. 46 in the IMO Convention) (requesting the Secretary-General to keep the members of the Agency informed of its activities) provides for the appointment of representatives of the members for the purpose of liaising with the Secretary-General.

5. Subsidiary Organs, Committees, Commissions

In all Specialized Agencies, at least some subsidiary organs exist alongside the main organs. These are established by the conference or the council and function as bodies for the preparation of decisions for the main organs, e.g. on programme or budgetary questions. They may be permanent as is the Maritime Safety Committee of the WMO (Art. 28) or temporary committees. Their composition usually mirrors the voting power in the main organs. Very often, their work is of great importance as they materially stamp the decisions formally taken later on.

Regional committees composed of representatives of member States in the region concerned have gained a high degree of importance within WHO (Arts. 44 to 54). Their functions are, *inter alia*, to formulate policies governing matters of an exclusively regional character, to suggest the calling of technical conferences, and additional work of investigation on health matters within the assigned region. Thus, an attempt is made to boost the work of the whole Agency by concentrating on areas where sections of the membership have special interests and knowledge. In effect, a transfer of the idea of decentralization into the field of international administration has occurred here. Similar committees have been established by FAO (Art. X) and WMO (Art. 18).

D. Decision-Making Process

1. Plenary Organ

The principle of the sovereign equality of States (→ States, Sovereign Equality) implies equal votes for all States in the decision-making process. One State, one vote is therefore the basic rule provided for in most of the constitutions and relevant rules of procedure of the Specialized Agencies. To take decisions, a quorum is usually required which relates either to the absolute

number of member States or to the number of members present in the assembly.

As a rule, decisions are adopted by a simple majority of members present and voting. This rule, however, does not take sufficiently into account the fact that States might be afraid to be constrained upon to sacrifice their own interests without getting anything in return; this is the case especially in economic organizations where the division of States into poor and rich produces groups of giving and receiving members with no immediate → reciprocity of interests. Two principal ways of securing the interests of both groups are viable. The first is the establishment of special majority requirements for particularly important questions. Such issues may include questions of membership and finance, the adoption of constitutional amendments, the exercise of some quasi-legislative powers and certain elections. A two-thirds majority is very commonly used for these cases. The IMF Agreement requires for a total of 49 different issues majorities of 70 or 85 per cent, sometimes even unanimity. For WMO, the two-thirds rule is the rule across the board (Art. 11(b)).

The system of → weighted voting provides the second way for safeguarding various interests. This system is used within the World Bank Group and IMF and attributes to the member States differing voting power according to their financial contributions or subscriptions to capital. As a consequence, only six (but, at the same time the largest contributing) members out of a total of 141 hold more than 50 per cent of votes. If this system is combined with the requirement of special majorities as is quite often done, one State alone is sometimes able to → veto a decision, e.g. the United States, which holds 21 per cent of all votes in the IMF. To place this picture of voting rights in perspective it must be said that decision-making by → consensus often also takes place in these organizations.

A fresh departure was made with the IFAD (Art. 6, section 3). Here the system of weighted voting has also been introduced but it applies only within the three categories to which the members are allocated (I: developed States; II: OPEC; III: → developing States). This development, if it sets a trend towards parity of groups, might be a viable compromise between the 'strict equality of vote' system and the unequal – and therefore politically unpopular – 'distribution of voting power' system.

2. Council

The voting procedure here is not substantially different. A quorum is also required. Usually, decisions are adopted by a majority vote of the members present and voting. Here again, WMO requires two-thirds majority, whereas other Agencies only provide for special majorities on important questions. Provisions, analogous to those applicable to the Governing Council of IFAD exist for its Executive Board (Art. 6, section 6). The new constitution of UNIDO (Art. 9), by determining the composition of its Industrial Development Board according to four categories is an attempt to steer the decision-making process, placing weight on the necessity to reach agreement within the different groups.

E. Financing and Budgeting

1. Budgets

The general independence of the Specialized Agencies is underpinned by their essential autonomy in financial matters. According to Art. 17(3) of the UN Charter, the General Assembly can only examine the administrative budgets of the agencies with a view to making recommendations. There was at first a tendency of the part of the Agencies to separate the administrative from the operative budget, but it soon became clear that this separation is a rather artificial one and difficult to put into practice. Accordingly, the relevant rules of the relationship agreements do not restrict the UN General Assembly's consideration of the Specialized Agencies' proposed budgets to the administrative budget.

The proposed budgets are discussed within the Advisory Committee on Administrative and Budgetary Questions (ACABQ), a subsidiary organ of the UN General Assembly; the agencies participate in the deliberations without a vote. The General Assembly takes a resolution on the report of the Committee together with the overall report of its fifth main committee (financial and budgetary questions). On the whole, this procedure did not have much impact on the financial

and budgetary plans of the Agencies. In 1966, the Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies rendered its Second Report (UN Doc. A/6343) recommending guiding principles concerning the standardization of budget practices and financial regulations. As ECOSOC and its Committee for Programme and Coordination (CPC) took a strong interest in the implementation of these proposals, important progress on such technical matters has been achieved; for example, following the practice of the UN itself, most Specialized Agencies have now adopted the two-year budget cycle. There is no prospect, however, of achieving the aim of the older relationship agreements, i.e. a general budget for the entire United Nations system, including the budgets of the agencies. Such a change-over to a consolidated budget would require amendment of the constituent instruments of the Agencies. This cannot realistically be expected. Moreover, the financial institutions (World Bank Group, IMF) dissociate themselves in their relationship agreements from any kind of financial supervision by the United Nations.

Final approval of the budget is given by the plenary organ of the Agencies, usually by a two-thirds majority, after the director-general has prepared and the Council considered the draft budget.

2. Financial Sources

The most important source of current income is the annual contributions of the member States to which they are obliged to pay under the basic instruments. The assessment of contributions is today mostly assimilated to United Nations criteria generally applying maximum and minimum rates (→ International Organizations, Financing and Budgeting). As, in most cases, the United States' contribution amounts to 25 per cent of the total contributions, it is clear why her withdrawal in 1977 hit the ILO so hard. Sometimes the assessment of the United Nations is combined with an additional contribution factor which is, e.g. in the case of IMCO/IMO, the specific capacity of members in the operational field of the agency. In other cases (ITU, UPU) the members may choose for themselves the class of contribution. In all cases, the dependence of the Agencies on scrupulous contribution is self-evident, and therefore, like the UN Charter (Art. 19), most Agencies' constitutions provide for → sanctions if a member fails to meet its financial obligations.

Apart from the obligatory contributions of the members, the Agencies may receive gifts and voluntary contributions from members, private organizations or other institutions. In this context, the → United Nations Development Programme (UNDP) is playing an increasingly important role, contributing considerable sums to the operational budgets of several Specialized Agencies. UNDP grants constitute for some Agencies more than 90 per cent of their entire operational budget (UPU, IMCO/IMO).

3. Controls

Willingness to make voluntary contributions depends greatly upon the possibility to audit the finances of an organization. In principle, the Agencies have their own internal auditors, but they are not always very efficient. Therefore, the above-mentioned 1966 report of the Ad Hoc Committee of Experts (section E.1.) stressed the importance of external auditors. Substantial progress towards this goal has not been made in all Agencies; moreover, some Agency administrations obstinately resist any external controls. In such cases even the offer of the Joint Inspection Unit (JIU) to assist the Agencies in the control of their expenditures has little chance of acceptance. The JIU, set up after the said report of 1966, has "the broadest powers of investigation in all matters having a bearing on the efficiency of the service and the proper use of funds" (Art. 5 of the Statute of the JIU, UN GA Res. 31/192, Annex, of December 22, 1976). According to Art. 1, para. 2 of its Statute, the Unit is characterized as a subsidiary organ not only of the UN General Assembly, but also of the legislative bodies of those Specialized Agencies which accept the Statute. This has been done by all Agencies with the exception of the financial institutions, WIPO and IFAD, UNESCO having made a reservation concerning the legal characterization of the Unit as subsidiary organ on the ground that this qualification cannot be laid down by the General Assembly with legal effect for a Specialized

Agency. The formal acceptance of the Statute has, however, not induced all Agencies to open their financial conduct to external audit and investigation.

F. Settlement of Disputes

The constituent instruments normally contain rules on the settlement of disputes concerning their interpretation (→ Interpretation in International Law) or application, but these vary widely as to details. The constitutional provisions of the four financial institutions and of IFAD referring to questions of interpretation arising between members of the respective Agency or between any member and the Agency itself provide solely for an internal settlement by the executive and, for final decision, by the plenary organ.

Where the constitutions do provide for arbitration for disputes among members, a first phase intended to secure the internal settlement of intra-organizational disputes has sometimes to be completed before an appeal to the → International Court of Justice or to an arbitral tribunal may be made (e.g. ICAO Convention, Arts. 84 to 86). This step is, however, not always prescribed as obligatory. For instance, Art. 75 of the WHO Constitution states: "Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement." In the case of UPU (Convention, Art. 298) only arbitration is placed at the disposal of the disputing parties. Art. 22 of the new UNIDO Constitution provides for a conciliation commission (→ Conciliation and Mediation), if the parties do not agree to appeal from the Board's decision as tribunal of first instance to the ICJ or to an arbitral tribunal.

According to Art. 96(2) of the UN Charter, the UN General Assembly may authorize the Specialized Agencies to request → advisory opinions of the ICJ on legal questions arising within the scope of their activities. All relationship agreements but one (UPU) embody this authorization, excluding, however, therefrom "questions concerning the mutual relationships of the organization and the United Nations or other specialized agencies" (e.g. WIPO relationship agreement, Art. 12). Requests for advisory opinions may be addressed to the Court by the plenary organ of the agency or by its council pursuant to an authorization of the plenary organ. Some constitutions contain corresponding provisions to these (e.g. WHO Constitution, Arts. 76 and 77).

Practice shows that the Agencies have not made extensive use of this procedure; the Court has only twice, in 1960 and 1980, had occasion to deliver such opinions (→ IMCO Maritime Safety Committee, Constitution of (Advisory Opinion); → Interpretation of Agreement of 25 March 1951 between WHO and Egypt (Advisory Opinion)). Both cases indicate, however, that the seeking of an advisory opinion can present a helpful means for settlement of conflicting legal views between the Agencies and their members, even if it lies with the Agency to request the opinion or to pass on the disputing arguments of its member. Even in cases when the Agency is obliged to ask the Court, the member State has no way of enforcing this obligation (e.g. IMCO Convention, Art. 56, renumbered as Art. 66 in the IMO Convention; cf. → International Obligations, Means to Secure Performance). Thus, the legal protection of members' rights against acts of the organization has not yet been satisfactorily provided for.

Judicial protection for the civil servants of the Specialized Agencies in disputes concerning employment matters is provided either by the → International Labour Organisation Administrative Tribunal, the → United Nations Administrative Tribunal, or the → World Bank Administrative Tribunal.

G. Legal Status

It is generally recognized today that public international organizations may be → subjects of international law. They do not enjoy this status, however, simply by their existence; it must be granted to them by States. This is usually done by the founding States, expressly or impliedly, in the constituent instruments of the organizations. With regard to the Specialized Agencies, only the IFAD Agreement is unequivocal on this point (Art. 10, section 1: "The Fund shall possess international legal personality"). The formulations in

the other constitutions are less clear. While the basic instruments of the ILO, the World Bank Group and IMF invest the respective Agencies with "full juridical personality", the second part of the sentence rather indicates that this refers to legal personality within a national legal order ("and in particular the capacity (a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to institute legal proceedings"). It is only in this latter sense that one can understand formulations according to which the Agencies shall have "in the territory of each Member such legal capacity as may be necessary for the fulfilment of its purposes and for the exercise of its functions" (e.g. WMO Convention, Art. 27(a) or where a simple reference is made to Art. 104 of the UN Charter, which provides for the same status for the UN itself (UNESCO Constitution, Art. XII). Art. XVI of the FAO Constitution is also couched in general terms pointing to national legal personality. Art. II of the Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947 hints again at the municipal personality. All this, however, does not mean that international legal personality has been refused to the Specialized Agencies other than IFAD; this status must be assumed to have been granted implicitly, as the functions of the Agencies can only be achieved if they possess a large measure of international personality (→ International Organizations, Implied Powers; → Reparation for Injuries Suffered in Service of UN (Advisory Opinion)). The Agencies further participate in international conferences and agreements (→ International Organizations, Treaty-Making Power); and provision for such participation has often been made in the constitutions (e.g. WIPO Convention, Arts. 12 and 13). Thus in effect, the international legal personality of the Specialized Agencies cannot be denied. They have the capacity to conclude treaties and to bring and to be the respondent of international claims (→ International Organizations, Responsibility). The international and the internal legal personality and the capacity to act derived therefrom is, however, only effective against those States which have recognized them (→ Recognition). The relevant considerations of the ICJ (Reparations Case, ICJ Reports 1949, p. 174) regarding the objective personality of the UN itself are probably not transferable to other organizations because they have not to accomplish such central functions for the well-being of the community of States as the world organization itself.

H. Privileges and Immunities

To secure the independent and effective functioning of international organizations, it is necessary to grant some privileges and immunities to the organization itself, its officials and to the delegates of the member States forming its organs (→ International Organizations, Privileges and Immunities). Thus, a Convention on the Privileges and Immunities of the UN was adopted as early as 1946 (UNTS, Vol. 1, p. 16). The UN General Assembly, contemplating the unification as far as possible of the privileges and immunities enjoyed by the UN and the Specialized Agencies, approved on November 21, 1947 the Convention on the Privileges and Immunities of the Specialized Agencies, which came into force on December 2, 1948 (UNTS, Vol. 33, p. 262). Eighty-eight States have so far acceded to the Convention, usually with respect to only some of the Agencies. However, the Convention, through the combination of accessions now applies to all of the Agencies.

The Convention contains "standard clauses" (Arts. II to IX) which apply to all Specialized Agencies "subject to any modifications set forth in the final ... text of the annex relating to that agency" (Art. X), in order to permit adaptation to the special needs of each Agency (e.g. the provisions of Art. V concerning immunities for the representatives of member States are extended, in the annex relating to the ILO, Annex I, to the employers' and workers' representatives as well).

According to Art. III, the Agencies, their property and assets enjoy immunity from every form of legal process except in the case of → waiver of immunity. It is interesting to note that actions may be brought against the IBRD, IFC and IDA by private persons and corporations, but not by member States or persons acting through State organs; their assets are not immune, either, being subject to execution of final private law judgments. In other cases, the agencies' property is immune against any form of interference, whether by executive, administrative, judicial or legislative

action. The Agencies enjoy in the territory of each contracting State official communications facilities not less favourable than those accorded by the State to any other government; no censorship is to be applied to official communications (Art. IV).

According to Art. V the representatives of the member States are granted immunity from personal detention, inviolability for all papers, documents, and personal baggage, exemption from immigration restrictions, freedom of speech, and complete independence in the discharge of their duties. All these privileges and immunities, however, are only accorded to safeguard the functions of the representatives and not for their personal benefit; any member State is therefore obliged to waive the immunity of its representative in all cases where it does not prejudice the purpose for which the immunity is accorded (section 16).

Art. VI concerns the officials of the Agencies. The States have to accord immunity from legal process in respect of all acts performed by them in their official capacity, exemption from taxation, immunity from immigration restrictions, privileges in respect of exchange facilities, exemption from import duties, etc. The executive heads of the Agencies enjoy the privileges and immunities accorded under national law to diplomatic envoys. Here again, the functionalist approach of the Convention is underlined (section 22). By Art. VIII the officials of the Agencies are entitled to use the UN *laissez-passer.*

In the case of an abuse of rights conferred by the Convention, the territorial authorities may require representatives of members or officials of the Agency to leave the country (Art. VII; cf. → Aliens, Expulsion and Deportation). If → consultations on an alleged abuse fail to achieve satisfactory results for the State or the Agency concerned, the question is to be referred to the ICJ, unless the parties have recourse to another mode of settlement (Art. IX; → Judicial Settlement of International Disputes). The advisory opinion of the Court is final. Some States parties have made reservations (→ Treaties, Reservations) with respect to this procedure.

The constitutions of the Agencies, with the exception of the World Bank Group and IMF, do not deal with the problem of privileges and immunities in great detail, but the relevant provisions are very important for those members which have not yet acceded to the Convention, as it is doubtful whether general international law has yet developed rules of immunity regarding international organizations. Thus, for example, Art. 67 of the WHO Constitution contains only the basic rule, according to which the Agency "shall enjoy in the country of each Member such privileges and immunities as may be necessary for the fulfilment of its objective and for the exercise of its functions"; a similarly general provision exists with regard to the immunities of representatives of members and of the personnel of the Agency. The constituent instruments of IMCO (Art. 51, renumbered Art. 61 in the IMO Convention), IFAD (Art. 10, section 2) and UNIDO (Art. 21(2)) expressly provide for the different situations where a member State is bound by the Convention or is not.

I. Headquarters

Notwithstanding the recognition of the autonomy of the Specialized Agencies, the early years of the United Nations revealed a tendency to centralize locally all the headquarters of the Agencies in New York the permanent seat (→ International Organizations, Headquarters) of the United Nations itself. Many relationship agreements reflect this situation in that they oblige the Agencies to consult the UN before making any decision concerning the location of their permanent headquarters (e.g. the relationship agreement of the ILO, Art. X); this is evidently without prejudice to a decision concerning the provisional seat. Corresponding provisions are found in many Agencies' constitutions (e.g. WHO, Art. 43). Other constitutions, however, particularly the later ones, contain express rules on where the headquarters are to be located (e.g. UPU, Art. 5; IMCO, Art. 44 (renumbered as Art. 54 in the IMO Convention); WIPO, Art. 10; IFAD, Art. 6, section 9; UNIDO, Art. 20); here, the respective relationship agreements do not treat the question.

All Agencies have concluded headquarters agreements with their host States (cf. WIPO Convention, Art. 12(2)). The Headquarters Agreement between the UN and the United States has served as a model (UNTS, Vol. 11, p.

12) for these agreements. They concern the definition of the headquarters district, the law applicable and the authority competent therein, communications and transit, resident representatives, and police protection of the district etc. They attempt to strike a balance between the requirements of an effective functioning of the Agencies and the preservation of necessary national interests. Analogous agreements are concluded with respect to the regional offices of the Agencies.

J. Specialized Agencies and the Law-Making Process

1. General

Specialized Agencies are created to perform specific and limited functions in the economic, social and cultural fields. As law is a major directive tool in realizing the Agencies' objectives, the preparation of legal norms for States, or even their enactment (→ International Legislation), are drawn within the scope of functions of the Agencies They may also participate by their law-making activities in the formation of rules of → customary international law. The functions of Specialized Agencies are thus only very exceptionally defined as merely "consultative and advisory" (IMCO Constitution, Art. 2, but deleted in the amended IMO Constitution).

2. Conventions

Some constitutions of Specialized Agencies empower their plenary organs to adopt, by a two-thirds majority, conventions of general application within their respective field of activities. These conventions, however, only become binding on a member after ratification (→ Treaties, Conclusion and Entry into Force). Members are perfectly free to adopt or reject a convention but they may be obliged to bring the convention before the competent national authorities for the possible enactment of legislation or the taking of other action within a certain period of time (e.g. Constitutions of ILO, Art. 19(5); WHO, Arts. 19 and 20; UNESCO, Art. IV(B)). Although the intricate methods of legislative procedure apply for the elaboration of the conventions, they remain fully subject to the consent principle. This is clearly demonstrated by cases like those provided for in the IMCO/IMO Constitution (Art. 3), where the Agency only prepares drafts which are transmitted to special conferences convened by the organization.

3. Regulatory Acts

The perceived desideratum to provide an expeditious and world-wide regulatory response to the challenges thrown up by technical and scientific progress, has led to the authorization being granted to some Agencies to enact rules. The ICAO Council as the restricted representative organ may, by a two-thirds majority, adopt and amend to international standards (→ Minimum Standard); there is no need for ratification or approval by the members (Arts. 37 and 54(1)). However, the adoption or amendment does not become effective if within three months the majority of the members register their disapproval with the Council (Art. 90). Moreover, each individual State which does not consider it is able to comply with the amendment may opt (or contract) out (→ International Legislation), notifying the organization of its decision (Art. 38). An analogous procedure is provided for by the WHO Constitution (Arts. 21 and 22), but here it is the plenary organ (the Health Assembly) that functions as the law-making body; adoption of regulations by it requires only a majority vote (Art. 60). Further, the WMO and IMCO/IMO Constitutions contain similar authorizations. As in the final analysis each member is still left with the possibility to avoid the binding force of such regulatory acts, the interpretation of these acts as quasi-legislative or even legislative has been greatly disputed. It is true, however, that competences like these regulatory powers highlight very sharply the transition from a contractual to a unilateral form of law-making, which is a specific feature of a legislative process. In this connection one should also keep in mind the procedure concerning the amendment of constitutions (*supra* section IV.A.1.).

4. Recommendations

Plenary organs or councils usually have, within their scope of functions, the right to address recommendations to the member States but the creation of international obligations is not intended by these acts. The difficult question of an

encroachment upon the → sovereignty of States therefore does not arise.

5. Generation of Customary International Law

It is a highly controversial subject whether Specialized Agencies – or any other international organizations – may, within their framework, participate in the generation of customary rules of international law. To be sure, legal acts of Agencies' organs alone can never lead to the formation of customary law. At any rate, the rules they promulgate must be supplemented by the adoption and putting into practice of those rules by the States. But the Agencies, by their activities, may initiate and prepare the basis for the corresponding conduct of States. Their potential involvement in the process of framing international customary law is thus difficult to deny.

K. Coordination and Cooperation

Despite the attribution of specific functions to each of the individual Agencies, more often than not there are overlapping activities among the Agencies and with the United Nations itself. This results partly from defining activities too broadly, partly from the distribution of functions that are too greatly interrelated with one another. A good deal of coordination is therefore necessary and the legal basis rests on provisions of the UN Charter, particularly Art. 63(2) and the relationship agreements (see section IV.A.2. *supra*). These provisions found the coordinating machinery either on unilateral rights of the UN (e.g. competence to give recommendations, use assistance, and request reports) or on reciprocal rights (e.g. liaison, agreements, exchange of information and documents, setting up of joint organs). Since the adoption of the first relationship agreements, it has transpired that the agreements are in some respects "outdated" (UN Doc. E/5524, p. 3). The reasons are manifold; among them figure prominently the omission of any machinery for coordination in the field of operational activities in favour of → developing States, the shift of activities from headquarters to regional and country levels, and the emergence of extra-budgetary funds as a new means for financing activities. The various deficiencies have also had serious effects on the operation of the coordinating organs.

The UN General Assembly itself has, until recently, not exercised very much influence over the activities of the Specialized Agencies. The work of the ACABQ has already been mentioned (see section IV.E.1. *supra*). Also, ECOSOC did not, as planned, succeed in playing a major role as the central instrument of coordination. This is mainly due to its two conflicting functions as a central and general organ of coordination for the Agencies and as a governing body for a number of specific activities of the UN itself; this resulted in a kind of rivalry between ECOSOC and the Agencies. But slowly, ECOSOC's Committee for Programme and Co-ordination (CPC) has attempted not only to avoid duplication of effort but also to develop activities for the promotion of concerted action. Since 1966, the CPC has held common sessions with the Administrative Committee on Co-ordination (ACC). This Committee, based on ECOSOC Resolution 13 (III) of 1946, is directed to concern itself with all matters falling within or outside the area of the relationship agreements which might become the subject of differences of view between the Agencies and the UN, and to make recommendations. The ACC is composed of the → United Nations Secretary-General and the executive heads of the Specialized Agencies; it thus represents a high-level, inter-secretariat, coordination group. Additionally, the chief administrative officers of other institutions as GATT, UNDP, UNCTAD, UNICEF take part in the deliberations of the ACC; there are also permanent → observers as, for example, the executive head of the → United Nations Environment Programme (UNEP). It is disputed whether the ACC is an organ of ECOSOC or whether it derives its authority from the inherent powers of its members as chief executive officers of their respective organizations. In any case, ACC with its numerous commissions has become the most important forum for coordination. Some relationship agreements therefore expressly provide for the participation of the Agencies in the work of this body (e.g. WIPO, Art. 2). Nevertheless, the ACC has also been unable to establish priorities on substantive matters. The same is true for the Environment Co-ordination Board (ECB), a body established within the framework of the

ACC, and for the Inter-Agency Consultative Board of the UNDP (IACB), where the executive heads of the Specialized Agencies may take part in a consultative capacity in the decision-making process of the Board. A further body exists within the UN Secretariat, the Office of Inter-Agencies Affairs and Co-ordination (IAAC), which is headed by an Under Secretary-General.

The abundance of coordination organs and the dearth of satisfactory results led to new UN efforts in the 1970s. In 1975 a group of experts offered a report on "A New UN Structure for Global Economic Co-operation" (UN Doc. E/AC. 62/9); two years later another report was submitted by the Ad Hoc Committee on the Restructuring of the Economic and Social Sectors of the UN System (UN Doc. A/32/34 and Add. 1). The General Assembly, by Resolution 32/197 of December 20, 1977 accepted the report and the related recommendations. They concern the streamlining of ECOSOC's work and cooperation between the CPC and ACABQ. The role of the ACC was also stressed as the centre of inter-agency coordination and the ECB and IACB were merged with ACC. The new post of a Director-General for Development and International Economic Co-operation was created at the same time. The Director-General is under the immediate authority of the UN Secretary-General; he is charged with maintaining overall coordination within the UN system in order to ensure a multidisciplinary approach to the problems of development on a system-wide basis and to ensure coherence and efficient management of all activities in the economic and social fields that are financed by the regular budget or by extra-budgetary resources. In this capacity, the Director-General, instead of the Secretary-General, now usually presides at ACC meetings. The success of these reforms can be judged only at a future date.

L. The Politization Issue and Outlook

The conceptual basis of the Specialized Agencies is functionalism. Functionalism assumes that areas of activity relatively free from political controversy can be identified and that cooperation in these areas may gradually spread over to other fields. This concept has been put in question by the two most important post-war developments: the East-West controversy and the emergence of numerous new States (→ New States and International Law) on the world stage as a result of the → decolonization process. The Specialized Agencies have not avoided becoming embroiled in the basic political struggle associated with these developments. As a consequence of this, the theory that it is the non-political fields that are to be administered by Specialized Agencies was deeply affected by two factors: the first concerns serious doubts which arose regarding the possibility of identifying at all areas free from political dispute; → human rights questions – a highly political issue in the public international law of this time – have certainly to be dealt with, e.g. by the ILO and UNESCO. The second factor, however, goes still further because an attempt was made to use the Specialized Agencies as instruments to "intensify" the effect of resolutions of the general political organization, i.e. the UN. Most relationship agreements oblige the Agencies to assist the → United Nations Security Council in carrying out decisions for the maintenance or restoration of international peace and security (e.g. ILO, Art. VI; WHO, Art. VII; → United Nations Peacekeeping System); in two further cases agency agreements take note of the obligation of members according to Art. 48(2) of the UN Charter (IBRD and IMF, Arts. VI). Some other agreements are silent on the subject or contain at most a provision on assistance to the UN in general (e.g. IFAD, Art. XI), but this obligation to assist is dependent on the due exercise of rights given to the UN organs under the Charter. Thus no legal duty exists in principle for the Specialized Agencies to follow the general political path of the UN. In fact, the Agencies have responded to various requests of the UN in very different ways. For instance, some Agencies have cooperated closely with the UN in its policy (→ Apartheid) against the Republic of South Africa; for example, WIPO, after its failure to expel South Africa from the organization, decided in 1979 no longer to invite this State to any conference of, or convened by, the organization. Other Agencies have shown more resistance: In 1969 the Congress of UPU decided "to exclude from its debates all specific questions of a political nature" (UN Juridical Yearbook 1969, p. 120), but it later emerged that UPU did not remain

unaffected by the general policy of the UN either. The controversy between the UN and the IBRD which arose in 1966 because of loans granted to South Africa is well-known. By refusing the request of the UN to cancel the loans, the World Bank relied heavily on Art. IV, section 10 of its basic instrument prohibiting the Bank to "interfere in the political affairs of any member" (cf. also IFAD Agreement, Art. 6, section 8(f)). This argument was disputed as the term "political affairs" would seem to cover only questions of internal national policy and not foreign policy.

On the whole, a tendency towards erecting a hierarchy within the UN system has become apparent. This tendency is certainly in part inherent in the legal structure of the system inasmuch as one may refer to the coordinating and recommendatory powers of the UN and to the Specialized Agencies' lack of capacity to request advisory opinions of the ICJ concerning the relations between themselves and the UN, whereas the ECOSOC has been empowered to seise the Court with regard to precisely this relationship (UN GA Res. 89(I)).

On the other hand, one should note that the Agencies have developed techniques in order to lessen the influence of politics on their work. Areas of controversy can be minimized by improving the preparatory work on agenda items, by prior indication of the parameters of acceptable policies and by the separation of resolutions on political issues from substantive actions. To relieve political tensions, UNESCO and WHO have given extensive organizational freedom to their regional groups or committees; there are, for example, two subcommittees of WHO for the Middle East region, one comprising → Israel, the other not.

Nevertheless, it is obvious that a hierarchical UN family runs counter to the basic concept whereby the UN and its Specialized Agencies are on an equal footing. Seen in this context one may even speak of an institutional crisis for the Specialized Agencies. The recent creation of the IFAD and the UNIDO project shows, however, that the idea of functional decentralization is not yet dead. Thus the result of this crisis of self-assessment is still open.

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ECKART KLEIN

UNITED NATIONS TRUSTEESHIP SYSTEM

1. Notion

The United Nations Trusteeship System is embodied in Chapters XII and XIII of the → United Nations Charter. It provides for the administration of certain territories, placed under the system, which are not to a full extent self-governing; these territories are under the supervision of organs of the UN. It is a special system covering a sector of the general régime for → non-self-governing territories established in Chapter XI of the UN Charter. It shares in principle its main objective with that of the régime for non-self-governing territories, that is the administration in the interest of the populations of the territory and their development and in the interest of the whole community of nations (see Arts. 73(a) to (d), 74, 76(a) to (d)). But while in general the administering State rules a non-self-governing territory in its own right or under a title from a bilateral agreement, the competence of the administering authority for a trust territory (UN Charter, Art. 75) is derived from an international organizatory act; the trust territory must be individually placed under the trusteeship system and the organs and procedures for the supervision are specially established in or according to the UN Charter.

The trusteeship system obviously follows the → mandates system of the → League of Nations, but the UN Charter formulated the obligations of the administering authority more stringently and tightened the supervision. The → strategic areas as regulated in Arts. 82 and 83 of the UN Charter are trust territories within the trusteeship system, but the functions regularly bestowed on the General Assembly are conferred to the Security Council, and special security aspects can be considered for their administration and supervision.

2. Concept and Development

(a) Origin

The idea that rule over a foreign population in → colonies has to be exercised ultimately for their benefit, and is thus to be considered as a trust, can be traced back to the Spanish scholars Las Casas and de Vitoria (see C. Castañón, Les problèmes coloniaux et les classiques espagnols du droit de gens, RdC, Vol. 86 (1954 II) p. 557) and to Edmund Burke in his speech in 1783 relating to India (W. Cobbelt, Parliamentary History of England, Vol. 23, 1782–1783 (1814, Repr. 1966) cols. 1316–1317). It led to the General Act of the → Berlin West Africa Conference (1884–1885) and to the General Act of Brussels of 1890 (denouncing → slavery), and later formed the basis for the League of Nations mandates system.

Besides the precedent of the mandates system, the UN trusteeship system has its roots in the discussions held during World War II. In May 1942 President Franklin D. Roosevelt's suggestion to place all colonies under an international com-

mission until they were ready for self-government received serious attention from Soviet Foreign Minister Vyacheslav Molotov. A United States Department of State draft, known as the "Declaration by the United Nations on National Independence", covering all colonial territories, proclaimed the duty of States to develop territories under their control towards independence and provided for regional supervision. The United States presented the question at the Quebec Conference in August and at the Moscow Conference of the Foreign Ministers of the Three Powers in October 1943 to British Foreign Secretary Anthony Eden, who rejected this idea. At the Three Power Conferences in Cairo (November 1943) and Tehran (November/December 1943) Prime Minister Winston Churchill opposed the American proposal to place French territories under an international trusteeship (→ Tehran Conference). At the → Dumbarton Oaks Conference in 1944 the subject of international trusteeship was not formally discussed; nor was substantive agreement on the matter reached at the → Yalta Conference in February 1945.

After consultations of the five permanent members of the then proposed → United Nations Security Council at the beginning of the San Francisco Conference, they each presented preliminary drafts of a new chapter for the UN Charter (Documents of the United Nations Conference on International Organization (UNCIO), Doc. 2, G/26(a), (c) to (f), Vol. 3, pp. 604–619). The United Kingdom draft began with a general declaration on the principle of trusteeship to guide colonial powers, with universal application. During the Conference this declaration led to the adoption of Chapter XI of the Charter: the Declaration regarding Non-Self-Governing Territories. The United States proposal was confined to the trusteeship system for specified territories, and the remaining drafts were modelled after it. The most important differences in the wording of the five proposals lay in their provisions regarding political development. The United States draft spoke of the territories' "progressive development toward self-government"; the British of "the development of self-government in forms appropriate to the varying circumstances of each territory"; the French draft stated only an objective of furtherance of "the progressive development of their political institutions"; the Chinese formula read "toward independence or self-government as may be appropriate..."; and the Soviet delegation proposed "having the aim to expedite the achievement by them of the full national independence".

The matter was dealt with in Committee Four of the Second Commission of the Conference, where a working paper of May 15, 1945 was drawn up by adding elements of the other drafts to that of the United States. Another working paper followed on May 25 and finally on June 17 emerged the text on the international trusteeship system which, after editorial changes, became the text of Charter Chapters XII and XIII (see UNCIO Doc. 323, II/4/12; Doc. WD 33, II/4/A/1; Doc. 1044, II/4/37(2), Vol. 10, pp. 677–716).

(*b*) *Objectives*

The Charter provisions on the UN trusteeship system share with those of the League Covenant on mandates the same starting point: Even though the Charter does not repeat the characterization of the territories as in Art. 22 of the Covenant ("inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world..."), the need to promote the progressive development towards self-government and to assist in the progressive development of the peoples' free political institutions in the transitional period is recognized by Arts. 73(b) and 76(b) of the Charter. The administration of those territories is termed in Art. 73, as in Art. 22(1) of the Covenant, a "sacred trust".

Unlike the brief provisions in the League Covenant, the UN Charter elaborates in detail the objectives of the trusteeship system in Art. 76 and, in general, in Art. 73(a) to (d). The interests of the inhabitants of these territories and the promotion of their well-being are paramount. The main objective is to promote the political, economic, social and educational advancement of the inhabitants; following the Chinese proposal, the system aims at their "progressive development towards self-government or independence" (Art. 76(b)). These two notions are overlapping, and this phrasing in the alternative, together with

the condition of appropriateness, provides for some flexibility. According to the principle of → self-determination as stated in Arts. 1(2) and 55 of the Charter, "the political aspirations of the peoples" (Art. 73(b)) and especially the "freely expressed wishes of the peoples concerned" (Art. 76(b)) have decisive weight for determining whether complete independence or self-government in a framework of another political system is to be the final goal of the political development. With the consent of the territory's population, the political objective can also be reached by establishing a special union with a State, by merging with a State or other territories in order to form a State, or even by establishing a system of self-government for internal matters, leaving foreign relations, for example, to an international institution. Art. 76(c) contains special guidelines for the kind of political education under trusteeship: encouraging respect for → human rights and fundamental freedoms and encouraging recognition of the → interdependence of the peoples of the world.

Under Art. 84, the trust territory is to play its part in the maintenance of international peace and security (see also Art. 76(a)). While in Art. 22(5) of the League Covenant the military training of the inhabitants for engagement outside the territory was forbidden for B mandates, Art. 84 of the Charter expressly empowers the administering authority to make use of volunteer forces, facilities, and assistance from the trust territory in carrying out obligations towards the Security Council undertaken by the administering authority (→ United Nations Peacekeeping System; → United Nations Forces). Art. 84 does not limit this use to enforcement actions within the UN framework. Trust territories designated as strategic areas may be used more extensively for military purposes.

Historically, the tensions brought about by economic rivalry among the colonies had endangered peace. The League mandates system was thus based on the open door policy and the principle of equal opportunities for trade and commerce in the B mandates. For the UN trusteeship system "equal treatment in social, economic and commercial matters" is ensured for all UN members and their nationals (Art. 76(d)).

3. Organs

Art. 75 of the Charter establishes that the administration of the trusteeship system is to be exercised on behalf of the UN. In this sense, the administering authority may be deemed to be one of the organs of the trusteeship system. In practice, the administering authorities were, with one exception, single States: Australia, Belgium, France, Italy, New Zealand, the United Kingdom and the United States. Only for Nauru did three States jointly form the administering authority, Australia being the acting power. Though provided for in Art. 81 – the only express authorization of the UN to govern a territory directly – the UN has never itself functioned as an administering authority in practice. The whole system is thus drafted so that the administering authority is to be supervised by the UN.

The general functions of the UN within the trusteeship system (the approval of the individual trusteeship agreement and the final supervision of the administration) fall within the competence of the → United Nations General Assembly (Arts. 16 and 85). As a special body operating under the authority of the General Assembly, the Trusteeship Council assists the main organ. (For strategic areas, the Security Council has these functions (Art. 83).)

Trusteeship Council members fall into three groups: all UN member States administering trust territories; States which are permanent members of the Security Council, but are not administering trust territories; members elected for three year terms by the General Assembly in such a number that the non-administering equal in number the administering members (Art. 86(1)).

At the beginning of the Trusteeship Council's work, four non-administering members were elected; a fifth was elected in 1956 following Italy's admission to the UN. In the 1980s, the only administering member is the United States, for a strategic area; France, Great Britain, China and the Soviet Union sit as permanent non-administering members under Art. 86(1) (b). The guarantee that the non-administering permanent members of the Security Council be members of the Trusteeship Council has made maintaining numerical parity of administering and non-administering members impossible.

4. Application

Art. 77 of the UN Charter provides for three categories of territories to be placed under the system: "territories... held under mandate" (Art. 77(1) (a)); those "detached from enemy states" (Art. 77(1) (b)); and those voluntarily placed under the system by the State responsible for its administration, the third category (Art. 77 (1) (c)). Ten of the eleven trust territories fell into the first category; Somaliland fell into the second; the third has not been used.

(a) Territories held under mandate

At its last meeting on April 18, 1946 the League Assembly adopted a resolution on mandates, welcoming the termination of the A mandates Syria, Lebanon and Transjordan and recognizing "that on the termination of the League's existence, its functions with respect to the mandated territories will come to an end..." (League of Nations Doc. A.33.1946, pp. 5–6). The League Assembly took note of the UN trusteeship system and the expressed intentions of mandatories to use it, but could not confer the mandates on the UN. The application of the trusteeship system was and is dependent on a "subsequent agreement" (Arts. 75 and 77(2)), i.e. the trusteeship agreement provided for in Arts. 79 to 82, a requirement extending to all three categories of territories set forth in Art. 77(1). Therefore, territories held under mandate could also only become trust territories by a trusteeship agreement, which needed the consent of the State administering the territory (Art. 79).

The A mandates of the League were terminated at the start of the UN trusteeship system, with the exception of the British mandate over → Palestine, which was not converted to a trusteeship territory. The B mandates in Africa were placed under the trusteeship system by the mandatory powers. The C mandates could, according to Art. 22(6) of the League Covenant, "be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards... in the interests of the indigenous population." South Africa refused to place South West Africa, a C mandate, under the UN trusteeship system (see → South West Africa/Namibia (Advisory Opinions and Judgments)). The islands in the Pacific under C mandate became trust territories: Western Samoa was administered by New Zealand; Nauru and New Guinea by Australia; and the → Pacific Islands by the United States as a strategic area.

One necessary party to the agreement establishing a trust territory is the State administering the territory or having the competence to dispose of it. Art. 79 speaks of the agreement "by the states directly concerned", but this phrase has never been defined. The trusteeship agreement needs the approval of the competent UN organ, but it is an open question whether the UN becomes a party to the agreement by this approval. If as in the case of the territories formerly held under mandate, the former mandatory and future administering authority is the only legal participant in the "trusteeship agreement", then it is not an "agreement" in the normal sense if at least the UN is not the second party. The trusteeship agreement would in this case not be a → treaty but rather a charter, proposed by the administering State and approved by the UN. Moreover, there is room for the interpretation that the agreement to place a territory under trusteeship (Arts. 75 and 77(2)) is to be distinguished from the agreement on the terms of the trusteeship (Arts. 79 and 81).

The former mandatories submitted draft trusteeship agreements to the General Assembly for its session in autumn 1946. The drafts were discussed in a Sub-Committee of the Fourth Committee and finally in the Assembly. As many as 229 amendments were proposed, but very few were actually adopted. The General Assembly accepted its lack of power to amend the draft without the full consent of the mandatories. On December 13, 1946, eight trusteeship agreements were approved by a two-thirds majority as an "important question" pursuant to Art. 18(2) of the Charter (GA Res. 63(I); UNTS, Vol. 8, pp. 71, 91, 105, 119, 135, 151, 165, 181), despite some criticism concerning several of the clauses. Agreed statements provided that the approval did not prejudice future decisions, such as amendments or alterations, or address the question of when individual States are "directly concerned". This discussion was repeated in the 1947 session, when the trusteeship agreement for Nauru (UNTS, Vol. 10, p. 3) was approved (GA Res. 140(II)).

The trusteeship agreements concerning the former mandates are similar in principle. Each defines the territory, designates the administering authority according to Art. 81, and states the obligations of the administering authority under Art. 76. The terms of trusteeship then specify the administering authority's powers concerning legislation, administration and jurisdiction, including the right to apply its national legislation to the territory, and the powers to form fiscal, administrative or → customs unions and to establish military bases. The agreements also deal with the promotion of the educational, cultural and political development of the inhabitants and the protection of their economic rights and of their freedoms of religion and speech.

(*b*) *Territories detached from enemy States*

Somaliland was the only territory detached from an enemy State as a result of World War II to be placed under trusteeship pursuant to Art. 77(1) (b). In Art. 23 of the → Peace Treaty of 1947 with Italy (UNTS, Vol. 49, p. 126), Italy had to renounce all right and title regarding her territories in Africa, i.e. Libya, → Eritrea and Somaliland. Under Annex XI of the Treaty the fate of these territories was later referred to the General Assembly for a binding recommendation. Plans to place Libya or a part thereof (Cyrenaika) and Eritrea, in addition to Somaliland, under trusteeship failed at the third session of the General Assembly. In a complicated package deal, the General Assembly decided in its fourth session in 1949, by Resolution 289(IV), that Libya was to become an independent State, the future of Eritrea was to be dealt with by a special UN Commission and Somaliland was to be placed under trusteeship for ten years, with Italy as the administering authority assisted by an Advisory Council composed of Colombia, Egypt and the Philippines (for details, see Murray, pp. 79–102).

The trusteeship agreement for Somaliland was drafted within the framework of the Trusteeship Council, with the participation of Italy (as the future administering authority), Ethiopia (without prejudice to the question of what constitutes a "state directly concerned" under Art. 79) and the three members of the Advisory Council. Even though the Italian draft served as the basis for the negotiations, the Trusteeship Council had a decisive influence on the final text of the detailed trusteeship agreement for Somaliland, which was approved by the General Assembly at its fifth session on December 2, 1950 (GA Res. 442(V); UNTS, Vol. 118, p. 256).

The eleven trust territories covered an area of 2.3 million square kilometres, inhabited at the end of the 1950s by about 22 million people. They ranged from Tanganyika, with 937 061 square kilometres and 9 million inhabitants at that time, to Nauru with an area of 21.3 square kilometres and 4800 inhabitants in 1963, 2500 of them indigenous.

5. Functioning

Although at present there are no trust territories subject to UN General Assembly supervision, the Charter principles regarding the system would govern the status of any territory which a State might in the future place under the trusteeship system under Art. 77(1) (c). The administering authorities have to administer trust territories according to the basic objectives stated in Arts. 73 and 76, as well as in line with obligations specified in the trusteeship agreement for the respective trust territory. The UN supervises this administration by applying the Charter provisions, the respective rules of procedure and the terms of the trusteeship agreement.

The first means of supervision is the ascertainment of information on the situation in the individual trust territory, to be collected by the General Assembly under Art. 87 and, under its authority, by the Trusteeship Council. In practice, the procedures mentioned in Art. 87(a) to (c) have been applied by the Trusteeship Council, which has forwarded its findings and conclusions in a report discussed in the Fourth Committee and then dealt with in the plenary meeting of the General Assembly.

The primary source of information on trust territory administration is the annual report, shaped in response to a questionnaire formulated by the Trusteeship Council, which must be submitted by the administering authority according to the terms of the trusteeship agreement and to Art. 88 of the Charter. These extensive reports, starting in 1946 and going up to about 1960, were not only a valuable means of supervision, but

also, together with the reports filed under the League mandates system, provide interesting documentation of the political, economic, social, and educational advancement of the territories and their populations. These reports were considered in the Trusteeship Council, with the administering authority supplementing the information in response to members' questions.

Petitions provided for in Art. 87(b) are another source of information. Long-deliberated rules of procedure call for the classification and circulation of petitions to the Council members, as well as for provision of information and comments by the administering authority. Between 1953 and 1961 the petitions were examined by a Committee on Petitions; the Trusteeship Council considered the report of the Committee in general, dealing only with the most important petitions.

The third source of information is provided by the on-site missions of the Trusteeship Council. The Council normally appointed four of its members to a mission, two from administering States and two from non-administering States. The mission was accompanied by staff and representatives from the local authority, and was to visit one of the groups of trust territories in East Africa, West Africa or the Pacific each year. In rotation, each territory in a group thus was inspected by a visiting mission every three years. The missions reported extensively on the relevant conditions, and responded to special questions formulated by the Council. Special missions were also sent to territories for particular tasks, such as supervision of a → plebiscite or elections.

The Trusteeship Council must consider the reports from the administering authorities and the missions and the information culled from the petitions. The Council's annual report to the General Assembly (the last one issued was for 1974/1975) typically contained an initial part reporting on its activities, examination of national reports, petitions and missions, and considerations on the attainment of the system's goals. The second part dealt with the conditions in the specific trust territories, and contained particular observations of the Council members. The General Assembly initially considered the Council's report in its Fourth Committee, and the Committee's proposals were in general adopted by the plenary session.

Historically, the political situations in the Trusteeship Council and the General Assembly were quite different, due in part to their differing compositions. The administering members of the Council had accepted the temporary application of the system and the aim of self-government or independence of the inhabitants. The non-administering members realized that the system could only work on the basis of cooperation with the respective administering authority. Of course some non-administering members, speaking for States which had become recently independent, watched over the rights of the populations with distrust of the administration. The Soviet delegate often used the Council as a forum to accuse the administering authorities of colonial exploitation. This controversy had its effects in the General Assembly as well. But that body's growing number of recently independent members and the struggle for rapid → decolonization resulted in the General Assembly having a decisive influence towards effecting earlier termination of the trusteeship system as applied to the particular territories.

6. End of the Regular System

(a) West Africa

The British trusteeship over Togo was ended with the incorporation of British Togo into the newly independent State of Ghana on March 6, 1957 (cf. → Decolonization: British Territories). Togo had been administered in an administrative union with the British colony of the Gold Coast. The General Assembly set certain conditions for such unions and in 1952 created a Standing Committee on Administrative Unions (see GA Res. 326 (IV) and 563 (VI)). But this particular union was accepted for practical reasons and in order to avoid establishing a new → boundary through the area inhabited by the Ewe population. After a UN-supervised plebiscite in 1956 resulted in a majority favouring incorporation of British Togo into an independent Ghana, the General Assembly accepted this solution and terminated the trusteeship (GA Res. 1044 (XI)).

The plebiscite held in French Togo in October 1956 resulted in a majority vote for an autonomous republic within the French Union (cf. → Decolonization: French Territories). In-

dependence was granted to the Republic of Togo in April 1960, and the trusteeship was terminated by General Assembly Resolution 1416 (XIV). French Cameroons became independent on January 1, 1960 (GA Res. 1349 (XIII)). In the British Cameroons two plebiscites were held in February 1961; the northern part decided to join the Federation of Nigeria, while the southern part joined French Cameroons in the United Republic of Cameroon. Both changes became effective in 1961, with the termination of the trusteeship approved by the General Assembly by Resolution 1608 (XV).

(*b*) *East Africa*

The Italian trusteeship over Somaliland was limited in Art. 24 of the trusteeship agreement to ten years following the agreement's approval by the General Assembly. Independence was scheduled for an earlier date, July 1, 1960, by agreement between Italy and the Somalian authorities, and the termination of the trusteeship was approved by General Assembly Resolution 1418 (XVI).

After a brief, difficult period of developing participation in self-government, Tanganyika became independent in December 1961 (GA Res. 1642 (XVI)). Together with Zanzibar, the former territory of Tanganyika is now the United Republic of Tanzania. The population of the territory of Ruanda-Urundi under Belgian administration was considerably less prepared for independence with respect to its level of political participation, and its social, educational and economic development. After tensions between the population groups, the Hutu and the Tutsi, erupted into violence, the authority reformed the local and the district administration. The first elections took place in 1960, with parliamentary elections held under UN supervision in 1961. The territory became independent as two separate States, Rwanda and Burundi, on July 1, 1962. Resolution 1746 (XVI) of the General Assembly, declaring an end to the trusteeship, provided two million US dollars from the UN budget "to ensure the continuation of essential services in the two countries".

(*c*) *Pacific Region*

In Western Samoa a political system incorporating the traditional order into a more modern form of government was gradually developed. Western Samoa became an independent State on January 1, 1962 (GA Res. 1626 (XVI)), but at the request of Samoa, New Zealand acts as the official channel to foreign countries and international organizations outside the Pacific area. Pursuant to the request of the General Assembly, Australian and Nauruan representatives agreed on the termination of the trusteeship over the island of Nauru, effective on January 31, 1968 (approved by GA Res. 2347 (XXII)).

The last ordinary trust territory, New Guinea, became independent in September 1975. It had been administered by Australia in an administrative union together with Papua. The UN mission visiting the territory in 1968 found that the majority of the inhabitants did not feel ready for independence, but rather wished trusteeship to continue for the time being. The General Assembly from time to time demanded that target dates be set and that the idea of independence be promoted even more vigorously. After gaining some experience with political participation, Papua New Guinea was granted self-government by Australia in 1973, and became an independent State on September 16, 1975, as approved by General Assembly Resolution 3284 (XXIX).

7. Evaluation

The extensive documentation available on the trust administrations show the efforts and the expenditures of the administering authorities for the political, educational, economic and social development of the inhabitants of the trust territories, as well as the considerable changes brought about in this period of, in most cases, about 15 years. The attitude of the administering authorities was not necessarily different from that shown by the same State when governing a neighbouring colonial territory, and the effect may in fact have been similar. This is indicated by UN approval of administrative unions for Togo and New Guinea and by the allowance of the fusion of trust territories with neighbouring newly-independent States which were former colonies, such as Nigeria and Gold Coast/Ghana. But the international supervision, the possibility of examining petitions, and the flying of the UN flag over the trust territories may have added to

the confidence of the indigenous populations and in this way may have helped their development. The supervisory procedures within the trusteeship system may also have had an influence on the general question of decolonization.

Whether the trusteeship system attained the basic objectives set forth in Arts. 73 and 76 of the Charter to the greatest extent possible may in some cases still be open to question. General Assembly resolutions terminating the trusteeships over British Togo and Somaliland (GA Res. 1044 (XI) and 1418 (XIV)) affirmed that "the objectives of trusteeship have been attained", while the more recent ones are silent on this point. The Permanent Mandates Commission of the League had, on the occasion of the termination of the mandate over Iraq in 1932, formulated criteria for evaluating whether a mandate had developed into a State (see Commission Permanente des Mandates, Procès-verbal, 20e Session 1931, p. 228). In the Trusteeship Council and the General Assembly, this question was never raised. Perhaps an extended trusteeship period would have helped some populations of former trust territories establish a more participatory political system than they in fact gained after independence and perhaps would have allowed their economic development to proceed with less reliance on foreign → economic and technical aid (→ International Economic Order). On the other hand, it is doubtful whether these developments would have been possible in light of the political desires and pressures for self-determination and independence.

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DIETRICH RAUSCHNING

UNITED NATIONS UNIVERSITY

1. Historical Background

The United Nations University (UNU), which became operational in 1974/1975, has behind it an extensive history of international

academic cooperation. It has long been the aim of all academic disciplines to achieve general international validity. Whole libraries are devoted to the correspondence of scholars across national frontiers; for centuries universities and academies have invited foreign experts. The → Institut de droit international, founded in 1873, brings together practising and academic lawyers from many countries and has contributed considerably to the codification and further development of international law (→ Codification of International Law). In the → League of Nations era, the Institut international de coopération intellectuelle was established in 1925 in Paris on a French initiative; two years earlier the → Académie de droit international was founded in The Hague under the auspices of the Carnegie Endowment for International Peace. After World War II the → United Nations brought into existence the → United Nations Educational, Scientific and Cultural Organization (UNESCO), which has since extended its activities world-wide into all spheres of knowledge (→ Cultural and Intellectual Cooperation).

The idea of a "world university" followed logically from these developments; it was propagated first by the International Association for the Establishment of a World University, founded in Stuttgart in 1949, with branches in many countries, especially France, and was the theme of many symposia and congresses, the last one being held in Monaco in 1968. → United Nations Secretary-General U Thant took up the idea and on his recommendation the → United Nations General Assembly, during its 24th session in 1969, invited him, in cooperation with UNESCO, to undertake a comprehensive study on the feasibility of an international university (UN GA Res. 2573 (XXIV)). A feasibility study prepared by UNESCO (Doc. ED/WS/257) concluded that a "super-university" with all possible faculties was neither necessary nor financially feasible; it envisaged rather the creation of an autonomous institution of a specialized nature which, from an established centre, could examine certain problems of academic freedom by drawing on the knowledge of experts and the resources of existing academic institutions (see Report of the Secretary-General, UN Doc. A/8510 of November 11, 1971). In 1972–1973 a Founding Committee drew up the Charter of the UNU, which was adopted by the General Assembly during its 28th session by a large majority (UN GA Res. 3081 (XXVIII) of December 6, 1973). In the meantime the Japanese Government had agreed to donate $100 million to help fund the University; the Charter therefore specified Tokyo as the headquarters of the UNU (Art. X). On the basis of an annual budget of $10 million (derived from the income produced by the Endowment Fund), it was ready to start operating in the academic year 1974/1975.

2. Purposes and Structure of UNU

Under its Charter, the UNU is "an international community of scholars, engaged in research, post-graduate training and dissemination of knowledge in furtherance of the purposes and principles of the Charter of the United Nations" (Art. I(1); → United Nations Charter). It functions under the joint sponsorship of the UN and UNESCO through a central programming and coordinating body and through a network of research and post-graduate training centres and programmes located in the developed and developing countries. It "devote[s] its work to research into the pressing global problems of human survival, development and welfare... with due attention to the social sciences and the humanities as well as natural sciences, pure and applied" (Art. I(2)). Its research programmes include, among other subjects:

> "coexistence between peoples having different cultures, languages and social systems; peaceful relations between States and the maintenance of peace and security; human rights; economic and social change and development; the environment and the proper use of resources; basic scientific research and the application of the results of science and technology in the interests of development; and universal human values related to the improvement of the quality of life" (Art. I(3); → Peace, Means to Safeguard; → Human Rights; → Environment, International Protection; see also → University for Peace).

The UNU enjoys autonomy within the framework of the UN and the academic freedom required for the achievement of its objectives, with particular reference to the choice of subjects

and methods of research and training, the selection of persons and institutions to share in its tasks, and freedom of expression. It decides freely on the use of the financial resources allocated for the execution of its functions (Art. II).

3. *Organization*

The UNU consists of a Council, serving as the governing board, a Rector, a University Centre and the research and training centres and programmes. The Council, established on a broad geographical basis, consists of twenty-four members serving in their individual capacities, appointed for six years jointly by the Secretary-General of the UN and the Director-General of UNESCO, who are *ex officio* members of the Council together with the Executive Director of → United Nations Institute for Training and Research (UNITAR) and the Rector. The Council formulates the principles and policies which are to govern the activities and operations of the UNU, considers and approves the work programme, adopts the budget on the basis of proposals submitted by the Rector, and reports annually to the General Assembly, the → United Nations Economic and Social Council and the Executive Board of UNESCO on the work of the UNU (Art. IV).

The Rector is responsible to the Council for the direction, administration, programming and coordination of the University (Art. III(3)). He is appointed, for a term of five years and eligible for one more term, by the UN Secretary-General out of a panel of not less than three and not more than five names prepared by a Nominating Committee consisting of the Chairman and two members of the Council, to which the UN Secretary-General and the Director-General of UNESCO appoint one member each. The Rector is the chief academic and administrative officer of the UNU with overall responsibility. The Rector submits the work proposals and budget estimates to the Council, appoints and directs the personnel of the UNU, sets up such advisory bodies as may be necessary, coordinates the total research and training programmes with the activities of the UN and its Agencies, and, so far as possible, with research programmes of the world scholarly community, and reports to the Council on the work of the UNU (Art. V).

The University Centre assists the Rector (Art. VI). The UNU includes a certain number of research and training centres and programmes established or to be established in various countries under the authority of a director. Their creation and incorporation into the UNU are by decision of the Council (Art. VII). The UNU is staffed by academic and administrative personnel and trainees. The academic personnel is composed of the Rector, his senior collaborators and the directors of the research and training centres and programmes, all of whom enjoy academic freedom in their work (Art. VIII).

Capital costs and recurrent costs of the UNU are met by voluntary contributions by governments, and non-governmental sources, including foundations, universities and individuals (Art. IX). The Endowment Fund of the UNU consists of $140 million (as of January 1982); the UNU has therefore an annual budget of about $14 million.

4. *Legal Status*

The Charter defines the UNU (Art. XI (1)) as an autonomous organ of the General Assembly enjoying the status, privileges and immunities provided in Arts. 104 and 105 of the UN Charter and in other international agreements and UN resolutions relating to the status, privileges and immunities of the Organization (→ International Organizations, Privileges and Immunities). The UNU may acquire and dispose of real and personal property, and may take other legal actions and enter into agreements or arrangements with governments, organizations, institutions, firms or individuals for the purpose of carrying out its activities (Art. XI). An elaborate headquarters agreement with Japan was signed on May 14, 1976. The Rector, the academic personnel and, in certain cases, administrative personnel are officials of the UN within the meaning of Art. 105 of the UN Charter, and Art. 100 of the Charter regarding independence from government instructions applies to them (→ Civil Service, International). Yet in the exercise of his functions, the Rector is solely responsible to the Council of the UNU and the personnel mentioned above are solely responsible to the Rector (Art. VII). Persons travelling on official business of the UNU are, on request, provided with appropriate UN travel documents (Art. XI(4)). Funds adminis-

tered by and for the UNU are subject to audit by the UN Board of Auditors (Art. IX(8)). The general administrative, personnel and financial services of the UN may be utilized by the UNU, it being understood that no extra cost to the regular budget of the UN shall be incurred (Art. IX(9)).

5. Programme

The Council of the UNU met several times during the year 1974/1975 and approved the adoption of three programmes which had previously been elaborated by groups of experts: the World Hunger Programme (WH), the Human and Social Development Programme (HSD), and the Programme on the Use and Management of Natural Resources (NR). The fifth annual report of the Council (1980) reports that the UNU is operating 19 networks, 26 associated institutions and over 100 research and training units located in more than 60 countries; it has awarded 225 UNU fellowships and produced 140 publications. Since October 1978 the Food and Nutrition Bulletin published under the WH programme, and since January 1979 ASSET (Abstracts of Selected Solar Energy Technology) under the NR programme have been appearing regularly, both UNU periodicals filling gaps in the scientific literature. The bimonthly UNU Newsletter informs on the activities of the UNU. In 1980 the UNU became co-publisher (together with the UN Secretariat's Division for Economic and Social Information) of the periodical Development Forum. The Medium-Term Perspective for the period 1982–1987, presented by the Rector who took office in September 1980, envisages the continuation of the present programmes but also proposes the introduction of new topics (especially in the field of world economic policy; cf. → Economic Law, International).

6. Evaluation

The UNU is not therefore a university in the traditional sense but rather a unique, totally novel creation. The achievements of the first five formative years show what it is specially qualified to contribute. As an example, its research into the protein requirements of the human body (under the WHP) was not carried out by any of the institutions or organizations that are active in this field; the results are nevertheless being utilized by such organizations (e.g. → World Food Council; → World Food Programme (UN/FAO)). Thanks to the financial autonomy ensured by the Endowment Fund and the University's guaranteed academic freedom, it is able, with the help of the best experts available, to achieve scientific results and to offer practical solutions which would not readily emanate from any other member of the UN family.

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UNITING FOR PEACE RESOLUTION

1. Factual Setting

Resolution 377(V), known as the Uniting for Peace Resolution, was adopted by the → United Nations General Assembly on November 3, 1950 by 52 votes to 5, with 2 abstentions. The Resolution was indicative of the general shift in emphasis away from the → United Nations Security Council to the General Assembly, and of the concomitant tendency to extend the General Assembly's competence as a result of the Security Council's inability to act due to East-West rivalry.

More specifically, the Resolution itself was inspired by the → United Nations' experience in the Korean situation. The Security Council had only been able to act decisively in → Korea due to certain accidental circumstances. First, for unrelated reasons, the Soviet Union had been voluntarily absent from the Security Council when the vote on the Korean question was taken. Second, a commission previously sent by the General Assembly to Korea provided the Security

Council with the authoritative information it needed to justify prompt action. Third, the United States had troops stationed in Japan that were available for immediate UN use. The Resolution was an attempt to ensure that in the absence of such accidental circumstances, future acts of → aggression could be handled in the same decisive manner manifested in Korea.

2. The Resolution

Part A of the Resolution stated that if the Security Council, because of the lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in a case of a threat to the peace, breach of the peace, or act of aggression, the General Assembly is to consider the matter immediately (→ United Nations Peacekeeping System). If the General Assembly is not in session, it is to meet in an Emergency Special Session within 24 hours if so requested by any 7 members of the Security Council (later amended by the Rules of Procedure of the General Assembly to any 9 members of the Security Council) or by a majority of the members of the UN. The General Assembly is then authorized to recommend → collective measures by its members, including in the case of a breach of the peace or act of aggression, the use of armed force to restore international peace (→ Use of Force).

A Peace Observation Commission was established to observe and report on the situation in any area where international tension exists. With the consent of the State into whose territory the Commission would go, the General Assembly may by a two-thirds vote utilize the Commission if the Security Council is not exercising its functions. In the Resolution, members were also requested to identify and maintain elements of their armed forces for service as UN units (→ United Nations Forces; → International Military Force).

Also, a Collective Measures Committee was created to study and report on methods which might be used to maintain and strengthen international security, in accordance with the → United Nations Charter and → collective self-defence and regional arrangements (→ Regional Arrangements and the UN Charter).

Finally, Parts B and C of the Resolution recommended that the Security Council improve its effectiveness in dealing with threats to peace (→ Peace, Threat to).

3. Debates on the Resolution

The Resolution's draft was considered by the General Assembly's First Committee at its 354th to 371st meetings from October 9 to 21, 1950, and by the General Assembly at its 299th to 302nd plenary meetings from November 1 to 3, 1950. The debates, reflecting the "cold war" atmosphere, were extraordinarily vehement, even bitter. Proponents of the Resolution, especially the United States, argued that while "primary" responsibility for the maintenance of international peace rested with the Security Council, its responsibility was not exclusive; a secondary responsibility devolved upon the General Assembly. In addition to Arts. 11 and 14 of the Charter, Art. 10 gives the General Assembly the right to make recommendations to member States on any matter "within the scope of the present Charter", except in a situation where the Security Council is exercising the functions assigned to it (Art. 12). The United Kingdom pointed out that if there was a breach of the peace, it was natural that under Art. 11(2) the question should be referred to the Security Council; but if the Security Council did not exercise its powers, Art. 11 would not preclude the General Assembly from using the powers conferred by Art. 10. Other proponents of the Resolution argued that a legal instrument such as the Charter must be interpreted so as to allow an effective achievement of its aims and that the Resolution offered such an interpretation (→ Effectiveness; → Interpretation in International Law).

Opponents of the Resolution, in particular the Soviet Union and its allies, condemned it as illegal and dangerous. The Soviet Union stated that if the → veto in the Security Council was objectionable, → good faith demanded amendment of the Charter in accordance with Arts. 108 and 109 (cf. → Treaties, Revision). The opponents contended that Art. 11 of the Charter made it clear that if a recommendation pointed to some action, the General Assembly itself would have no right to take such action and consequently could not recommend that specific measures should be

taken. The authority to forestall agression through coercive action was the sole prerogative of the Security Council under Art. 11(2). Invoking Hans Kelsen's The Law of the United Nations (1950) (esp. pp. 202 to 205), the Soviet Union pointed to restrictions in Art. 11(2) on the powers of the General Assembly which were not included in Art. 10: The General Assembly could discuss any question, but if it was a dispute or situation within the meaning of Art. 12(1), or if the matter was of such a nature as to make action necessary, the General Assembly could not make a recommendation but must refer the matter to the Security Council. The opponents pointed to other problems with the Resolution, such as determining the criteria for judging whether or not the Security Council was fulfilling its functions. Moreover, it was claimed that the provision in the Resolution authorizing the Security Council to call an Emergency Special Session without the concurrence of all permanent members violated Art. 20 (and 27), since the Soviet Union considered this a substantive question subject to the veto.

4. Subsequent Practice

Subsequent use of the Resolution has been relatively limited and not always entirely clear, due to the deliberate ambiguity in stating the legal basis of UN actions. The subsidiary bodies established by the Resolution have been of limited importance, although both are still formally in existence.

The Resolution has been used several times to convene an Emergency Special Session. Yugoslavia in 1956 suggested the first such session to consider the → Suez Canal crisis. The United Kingdom and France objected that the Resolution was improperly invoked, but their objections were overruled, with the Soviet Union as one of the countries voting for the resolution convening the session (SC Res. 119 (1956)). Resolutions were passed at this Emergency Special Session, which facilitated the withdrawal of foreign troops from the area and established the United Nations Emergency Force in Egypt (UN GA Res. 997(ES-I), 998(ES-I) and 1001(ES-I) of November 1956).

Resolution 337(V) was invoked again in 1956 to call an Emergency Special Session of the General Assembly concerning the Hungarian problem (SC Res. 120 (1956)). The Soviet Union at the time made no objections based on the procedural aspects of the Resolution, but opposed any General Assembly action on the ground that the problem was an internal matter for Hungary and of no concern to the UN (→ Domestic Jurisdiction; → Sovereignty).

In 1958, a resolution was unanimously approved by the Security Council which called for the third Emergency Special Session, this time to consider the Lebanese crisis (SC Res. 129 (1958)). The draft resolution calling for the session was amended at the Soviet Union's request to omit any reference to Resolution 377(V). This was acceptable to the United States, the author of the draft resolution, since such a session could only be called pursuant to Resolution 377(V) under Rule 8(b) or 9(b) of the Rules of Procedure of the General Assembly, even if Resolution 377(V) was not referred to by name.

In 1960, when the Resolution was used by the Security Council to refer the Congo problem to the General Assembly (SC Res. 157 (1960)), the Soviet Union again contested the legality of calling an Emergency Special Session of the General Assembly except with the unanimous approval of the permanent members under Art. 20. Somewhat inconsistently, in 1967, the Soviet Union requested the → United Nations Secretary-General to convene the fifth Emergency Special Session in order to consider the outbreak of hostilities in the Middle East (UN Doc. A/6717), and the Secretary-General complied (→ Israel and the Arab States). The Secretary-General summoned the General Assembly under Rule 9(b). The Resolution was used again in 1971 by the Security Council to transfer discussion of the Bangladesh issue to the General Assembly (SC Res. 303 (1971)), without any question raised as to the legality of this procedure.

The principle of the General Assembly's power to recommend use of force was applied in its call for action against the Chinese intervention in Korea in 1951 (Res. 498(V)); but Peterson concludes (at p. 224) that the General Assembly did not act under Res. 377(V) in this case. More recently, the Security Council, because of a lack of unanimity among its permanent members, convened the sixth Emergency Special Session of the General Assembly (SC Res. 462 (1980)). The

General Assembly at this session, invoking Resolution 377A(V), strongly deplored the Soviet Union's armed intervention in Afghanistan (GA Res. ES-6/2 (1980)). The seventh Emergency Special Session was held in 1980 when a majority of member States concurred with Senegal's request under Resolution 377A(V) for such a session to consider the question of → Palestine (UN Doc. A/ES-7/1 (1980)). The General Assembly subsequently called on Israel to withdraw from all occupied territories (GA Res. ES-7/2 (1980); → Israeli-Occupied Territories). Finally the eighth Emergency Special Session of the General Assembly was convoked under Resolution 377A(V) at the request of Zimbabwe (UN Doc. A/ES-8/1 (1981)) at which time it condemned South Africa's continued occupation of → Namibia (GA Res. ES-8/2 (1981)). The General Assembly virtually unanimously accepted the legality of Resolution 377A(V) in these last three sessions. While there was some debate over whether the substantive preconditions of Resolution 377A(V) were met, there was little question about the legality of using Resolution 377A(V) as a device for calling an Emergency Special session.

The practice of the Security Council appears to suggest acceptance of at least the procedural aspects of the Resolution. The Security Council has used the transfer and Emergency Special session mechanisms of Resolution 377(V) a number of times as a convenient method for convoking such a session. In particular, the Soviet Union, either by → acquiescence or → estoppel in requesting the 1967 Emergency Special Session, appears to be in no position to contest the legality of the procedures.

The UN has not used Resolution 377(V) in a context similar to the Korean situation. The Resolution has not expanded the General Assembly's authority in the way the Resolution's drafters had hoped. This is due in no small measure to the increase in UN membership and consequent change in the composition of UN majorities.

The substantive aspect of Resolution 377(V) – the General Assembly's power to recommend action, including use of force – was much discussed at the pleading stage of the → International Court of Justice's advisory opinion on → Certain Expenses of the United Nations. The relevant rulings of the ICJ (which did not mention Resolution 377(V)) were as follows: (1) The Security Council has primary, not exclusive, authority in the maintenance of international peace; (2) Art. 14, which authorizes the General Assembly "to recommend measures for the peaceful adjustment of any situation", confers upon it some dispositive authority in the peace and security field; (3) the word "measures" implies some kind of action; (4) the "action" reserved to the Security Council under Art. 11(2) are measures of a coercive or enforcement nature taken under Chapter VII, but the General Assembly is not precluded from recommending measures to maintain peace and security (ICJ Reports (1962) p. 151, at pp. 163–165). The Expenses case would suggest that, within the limits indicated by the Court, measures taken by the General Assembly pursuant to the Uniting for Peace Resolution are compatible with the Charter. However, because of the financial difficulties involved in funding peacekeeping measures, and the continuing controversy over the General Assembly's power, it is doubtful whether the General Assembly will in the future use Resolution 377(V) in even this more limited fashion.

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UNIVERSAL COPYRIGHT CONVENTION (1952) *see* Literary and Artistic Works, International Protection; World Intellectual Property Organization

UNIVERSAL POSTAL UNION

1. Historical Background

Before the 1850s, postal relations between States were essentially governed by bilateral postal agreements and arrangements, most often concluded between the respective postal administrations (→ Postal Communications, International Regulation). These agreements, however, lacked coordination and a common pattern.

In order to overcome this unsatisfactory state of affairs, a first international postal conference was convened at Paris in 1863 which adopted a number of general principles for international postal services, to be observed by national postal administrations. These principles did not bind States, but they were subsequently included into a number of bilateral agreements.

Encouraged by the establishment of the → International Telecommunication Union in 1865, Heinrich von Stephan, a German postal official, initiated a postal congress to establish a more permanent international coordinating body. The Congress, convened at Berne, Switzerland, in 1874, ended with the adoption of the Traité concernant la création d'une générale des postes (Berne Treaty), signed on October 9, 1874 (CTS, Vol. 147, p. 136), which established the General Postal Union with its seat at Berne. After the initial signing by 22 States, numerous other States acceded to the Berne Treaty, so that at the Congress of Paris in 1878 the name of the Union was altered to Universal Postal Union (UPU). Subsequently, the members of the UPU have met regularly for postal Congresses (in recent times every five years) and have periodically revised the Berne Treaty. Since the Congress of Vienna (1964), the Union has operated on the basis of the following Acts of the Union: the UPU Constitution and General Regulations, the UPU Convention and Detailed Regulations, and seven optional Agreements. The Acts currently in force are those of the Congress of Rio de Janeiro, 1979. The Union has been a → United Nations Specialized Agency since 1947.

2. Aims and Principles

The aims of the Union are to secure the organization and improvement of postal services, to promote international collaboration in the field, and to participate in postal technical assistance sought by members (Constitution, Art. 1(2) and (3)).

The Union operates on the basis of the following principles:

(a) formation of one single postal territory among the member States for the reciprocal exchange of letter-post items (Constitution, Art. (1));

(b) guarantee of freedom of transit (Constitution, Art. 1(1); Convention, Arts. 1 to 3);

(c) standardization of postal charges (Convention, Art. 7);

(d) non-sharing of postage paid for letter-post items between the sender country and the country of destination (Convention, Art. 60);

(e) settlement of disputes between members by means of → arbitration (Constitution, Art. 32);

(f) establishment and maintenance of a central office under the name of the International Bureau, the costs of which are shared by all members (Constitution, Art. 20);

g) periodical meetings of a Congress of representatives of member States for the purpose of revising the Acts of the Union and discussing matters of common interest (Constitution, Art. 14);

(h) promotion of the development of international postal services and of postal technical assistance to Union members (Constitution, Art. 1(1) and (3)).

The basic principles, as well as the specific rules for letter-post items, are contained in the mandatory Acts to which any member State of the UPU must become a party (the UPU Constitution; the General Regulations, governing the implementation of the Constitution; the Universal Postal Convention, containing general rules for all postal services and specific rules for letter services; the Detailed Regulations, governing the implementation of the Convention) (Constitution, Art. 22(1) to (3)).

International postal services other than letter-post services are governed by seven optional agreements and their respective regulations. Under Art. 22(4) of the Constitution, only those member States which have elected to become a party are bound to them. The optional agreements concern postal parcels, postal money

orders and postal traveller's cheques, giro transfers, cash-on-delivery items, the collection of bills, the international savings bank service, and subscriptions to newspapers and periodicals.

3. Membership and Structure

Since the Congress of 1878, the UPU has been an "open union" to which States could accede by simple unilateral → declaration (→ International Organizations, Membership). This was changed in 1948 when the prior approval of at least two-thirds of UPU member States was made a condition for accession. The Constitution of 1964 has returned in part to the old régime, since now any member State of the → United Nations may accede by unilateral declaration (Constitution, Art. 11(1) and (3)), whereas States, which are not members of the UN need two-thirds approval of UPU members (Art. 11(4)). Any UPU member may withdraw with one year's notice (Art. 12).

In principle, only sovereign → States can be members of the UPU. However, any member State may, by declaration, bring territories whose international relations it ensures or in which it has established post offices, within the scope of application of the UPU Acts (Arts. 3 and 23). Moveover, prior to 1964 certain dependent territories were themselves awarded full membership status (United Kingdom Overseas Territories, Netherlands Antilles), which has been maintained under the new Constitution (Art. 2(1)). In mid 1981, the Union had 165 members.

The organizational structure of the UPU is similar to that of other UN Specialized Agencies. The Congress is the supreme organ of the Union (Art. 14(1)). It is composed of representatives from all member States, each member having one vote. Its main task is the revision of the Acts of the Union. It also elects the States members of the Executive Council, fixes the limits for the expenses of the Union and examines the reports of the other UPU bodies. Member States are represented by plenipotentiaries who are normally high postal officials, not diplomats. The Congress meets, as a rule, once every five years (General Regulations, Art. 101(1) to (3)).

The Executive Council has the task of assuring the continuity of work of the Union between two Congresses (Constitution, Art. 17(1)). It normally meets once a year and is composed of the representatives of 39 member States, elected by the Congress on the basis of a formula ensuring equitable geographical distribution, and the President, who represents the host State of the previous Congress. The Council supervises the activities of the International Bureau, approves the annual budget of the UPU, draws up proposals for submission to the member States or, in certain cases, to the Congress, and has coordinating functions, internally as well as with respect to other international organizations (General Regulations, Art. 102(1) to (6)).

The International Bureau is charged with the task of serving as an instrument of liaison, information and → consultation for the member postal administrations, to serve as a secretariat (→ International Secretariat) for UPU bodies, and to carry out day-to-day business (Constitution, Art. 20). As a permanent organ, it has its seat at Berne and functions under the joint supervision of the Executive Council and the Swiss Postal Administration. It maintains, *inter alia*, a clearing office for the mutual accounts of member postal administrations (General Regulations, Arts. 108 to 118).

The Consultative Council for Postal Studies is an advisory body composed of 35 member States. It has the task of organizing studies on major technical, administrative or economic problems affecting member administrations, and of providing information and giving opinions on such matters. It normally meets once a year (Constitution, Art. 18; General Regulations, Art. 104).

Administrative Conferences may be convened, with the consent of at least two-thirds of UPU members, for the purpose of examining special administrative questions, e.g. problems of air mail (Constitution, Art. 16; General Regulations, Art. 101(9)).

Special Commissions may be established by the Congress or by any Administrative Conference for the purpose of dealing with special questions (Constitution, Art. 19; General Regulations, Art. 101(10)).

Each Congress fixes the maximum annual expenses of the Union for the following five-year period, plus the maximum expenses for the next Congress (Constitution, Art. 21). The expenses are borne by the member States in accordance with a formula of apportionment based on eight

different classes of contribution. Each member State chooses its own class of contribution (General Regulations, Art. 125).

4. Activities

The Union coordinates the work of member States' postal administrations with respect to international postal services. It does not operate any postal administration itself. Since member administrations do not normally separate international from domestic services, the coordinating work of the UPU extends, however, to both types of service.

The administration and periodic revision of the Acts of the Union form the principal element in the coordinating work of the UPU. The Acts may be revised either by the Congress, or, in cases of a pressing nature, by use of the interval procedure laid down in Arts. 119 to 123 of the General Regulations. Modifying the Acts by Congress requires normally a simple majority, except for changing the Constitution (two-thirds majority), the General Regulations (simple majority and two-thirds quorum), and the optional Acts (majority of parties to the respective agreement). In practice, UPU Congresses have to a large extent worked in a spirit of → consensus when revising the Acts. The use of the interval procedure by a member administration requires the initial support of at least two other members; it involves a consultation procedure and subsequently a vote *inter absentes*, via the International Bureau, on a specific proposal. This rarely-used procedure is reserved for exceptional cases.

All adopted changes and modifications to the Acts have traditionally required formal ratification by each member State. Usually, the new Acts as amended were ratified as a package, which in many cases took more than five years, the time when the next revision was due. In order to simplify the procedure, Art. 25 of the Constitution was entirely redrafted in 1964, so as to permit, wherever the municipal law of member States allows for it, governmental approval instead of formal ratification for all Acts other than the Constitution.

At the time when the new, modified Acts enter into force (usually now 18 to 24 months after their adoption), the Acts of the previous Congress are abrogated (Art. 31(2)). This places States which do not wish to sign or approve the new texts in a difficult position, since they are faced with the alternative of either accepting the new version or of excluding themselves from the world postal régime. The latter option is hardly acceptable for any State with a need for international communications. As a result, a number of States have in the past resolved this conflict by implementing the new Acts *de facto* while not signing or ratifying them formally. At the Washington Congress of 1897 and at the Cairo Congress of 1934 there was even some understanding to the effect that such *de facto* implementation by members which had signed could be accepted as a "tacit ratification" (Les Actes de l'Union, Art. 25, note 4). In practice, the UPU has cooperated in this course of action not only with non-ratifying members, but also with certain non-member States wishing to apply *de facto* the UPU rules without formally adhering to the Union.

As a UN Specialized Agency (Constitution, Art. 9; UPU-UN Agreements of July 4, 1947 and of July 13/27, 1949 (UNTS, Vol. 19, p. 219 and Vol. 43, p. 344)), the UPU cooperates closely with the UN and with certain other of its Specialized Agencies, such as the → International Civil Aviation Organization and the → World Health Organization. The Union also maintains close working relations with the → International Air Transport Association, the International Chamber of Shipping, the → Customs Cooperation Council and the International Organization for Standardization.

The UPU participates actively in the technical assistance programme of the UN, in particular through the → United Nations Development Programme. The UPU also cooperates with the regional → United Nations Economic Commissions and with the restricted postal unions in regional assistance programmes. In addition, the UPU finances an assistance programme of its own.

5. Special Legal Questions

Under Art. 32 of the Constitution, differences or disputes between member administrations concerning the interpretation of the Acts (→ Interpretation in International Law) or concerning obligations under them are to be settled by

arbitration. Each of the parties to the dispute appoints a member administration as arbitrator, unless a sole arbitrator, which may be the International Bureau, is designated (General Regulations, Art. 127). If a tied vote occurs, the two arbitrators appoint a third arbitrator. Twenty-seven arbitral awards have been rendered on this basis in the period of the UPU's existence, the large majority of which (21 awards) were rendered under the two-arbitrators arrangement. Most of the disputes involved problems of liability for loss of or damage to postal items, in which one administration had espoused the claims of its national or sought indemnification (→ Responsibility of States: General Principles).

Switzerland has traditionally played a unique role in the functioning of the Union, not only as the host State for its headquarters, but also as the supervisor of the International Bureau and of the finances of the Union. The Executive Council has now largely replaced the Swiss government in its supervisory functions over the International Bureau (General Regulations, Art. 102), but Switzerland still has controlling functions over the UPU accounts and – a unique feature in international organizations – advances any amounts necessary in case of temporary financial shortage of the UPU treasury (General Regulations, Art. 124(10)). Switzerland has agreed to apply its agreement with the UN of April 19, 1946 on Privileges and Immunities to the UPU in an analogous fashion (→ International Organizations, Privileges and Immunities).

Under Art. 8 of the Constitution, member States may make special arrangements and create "restricted unions", provided that this does not result in less favourable terms for the general public than those contained in the UPU Acts. Restricted unions must consist of at least three member States. The following restricted unions have been created to date, most of which have introduced intra-union postal charges more favourable than the UPU standard: the Postal Union of the Americas and Spain (UPAE, since 1931), the Nordic Postal Union (UPPN, since 1946), the Arab Postal Union (APU, since 1952), the → European Conference of Postal and Telecommunications Administrations (CEPT, since 1959), the African Postal Union (AFPU, since 1961), the Asian-Oceanic Postal Union (AOPU, since 1961), the African Postal and Telecommunications Union (UAPT, since 1975), and the Union panafricaine des postes (UPAP, since 1980). Two other regional postal organizations do not enjoy the status of a restricted union under Art. 8: the Organization for Cooperation of Socialist Countries in Telecommunications and Postal Communications (OCSC, since 1957), and the Conférence des administrations des postes et télécommunications des Etats de l'Afrique de l'Ouest (CAPTEAO).

6. Evaluation

Since its establishment, the Union has pursued its work with a high degree of continuity. It has managed to prevent undue "politicization" of its principal organs and to ensure efficiency of its work. The most important achievement of the UPU has perhaps been the elaboration and successful updating of the Acts, which represent the legal backbone of the regulation of international postal services, in a fashion accepted and implemented by practically all States.

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UNIVERSITY FOR PEACE

1. History

In 1978, in an address to the 33rd session of the → United Nations General Assembly, the president of the Republic of Costa Rica proposed the establishment of a University for Peace as a specialized international institute for post-graduate studies within the framework of the → United Nations University. The proposal was generally well received. Relying on a report of the → United Nations Secretary-General (UN Doc. A/34/496), the General Assembly approved the idea of creating this university and established an international commission to study the problems involved as well as to prepare its organization, structure and launching (GA Res. 34/111). The commission concluded its work by proposing an International Agreement for the Establishment of the University for Peace, with the University's Charter forming an integral part of the Agreement. In an appendix to the Charter, the commission formulated general principles, stressing the necessity to use education as a means to achieve and maintain peace (UN Doc. A/35/468, Annexes; → Peace, Means to Safeguard). On December 17, 1980 the General Assembly approved the establishment of the University for Peace in conformity with these legal instruments (GA Res. 35/55).

2. Legal Régime

While the International Agreement provides the formal basis for the establishment of the University for Peace in Costa Rica, the substantive body of rules are contained in its Charter. According to Art. 2 of the Charter:

> "The University is established with a clear determination to provide humanity with an international institution of higher education for peace and with the aim of promoting among all human beings the spirit of understanding, tolerance and peaceful coexistence, to stimulate co-operation among peoples and to help lessen obstacles and threats to world peace and progress, in keeping with the noble aspirations proclaimed in the Charter of the United Nations. To this end, the University shall contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge fundamental to the full development of the human person and societies through the interdisciplinary study of all matters relating to peace."

Art. 3 of the Charter invests the University with "the legal status necessary to enable it to fulfil its purposes and objectives", thereby granting to the University both national and international legal personality (→ Subjects of International Law). This conclusion is confirmed both by Art. 3 of the Agreement which concerns the legal capacity and the privileges and immunities of the University in the host country (cf. → International Organizations, Privileges and Immunities), and by Art. 4(1) of the Charter under which the University is empowered to enter into association or conclude agreements with governments as well as with inter-governmental and other organizations and institutions in the field of education (cf. → International Organizations, Treaty-Making Power).

The question of the relationship of the University for Peace to the United Nations University will be determined by common agreement between the two institutions, once the University for Peace is in fact established. Close links with the → United Nations Educational, Scientific and Cultural Organization (UNESCO) are also to be maintained (Charter, Art. 4(2) and (3)).

The organizational framework (Art. 5) consists of five components. The first is the Council of the University, which is its supreme authority. It is composed both of *ex officio* members (the Rector, area directors, four representatives designated respectively by: the UN Secretary-General, the Director-General of UNESCO, the Rector of the United Nations University and the Executive Director of the → United Nations Institute for Training and Research, and two representatives designated by the host country) and additional members (ten representatives of the academic community appointed by the UN Secretary-General in consultation with the Director-General of UNESCO, and three students) (Art. 6). The Council has the power, *inter alia*, to lay down the general policies of the University, to elect the Rector, and to amend the Charter (Art. 7). The decisions of the Council are taken by a majority of its members present and voting.

The Rector is the chief academic and ad-

ministrative officer of the University, responsible for implementing the policies established by the Council, preparing and executing the programmes, and also acts as the legal representative of the University (Arts. 10 and 11).

An International Advisory Board, composed of specialists in the various disciplines and who are proposed by the Rector and elected by the Council, is to advise the University on its academic programmes (Art. 13).

An International Foundation, as the body responsible for financial support, will be set up by the Council in → consultation with the host country.

Finally, the International Centre for Documentation and Information for Peace, as an integral part of the organizational structure of the University, has the function of identifying, collecting and disseminating data and information relating to peace (Art. 12; cf. → International Bureau of Education).

The university staff consists of the Rector, the academic staff, visiting professors, fellows, academic consultants and the research staff. The members are appointed by the Rector on terms and conditions determined by the Council (Art. 15). Students will be admitted in accordance with requirements set up by the Council (Art. 16). It is expected that once the University is complete, it could offer facilities for 2000 students and a faculty of 400.

In order to ensure the academic freedom of the institution, Art. 17 only very roughly describes the University programmes. The studies carried out at the University must focus on international peace. Irenology, defined as the study of and education for peace, is a compulsory subject within the programme of studies (→ Peace, Proposals for the Preservation of). The University may grant master's degrees and doctorates.

Special concern has been given to the financing of the University (cf. → International Organizations, Financing and Budgeting). According to Art. 4 of the Agreement and Art. 18 of the Charter, the expenses of the University may only be met from voluntary contributions of governments, international organizations, foundations, and from revenue derived from tuition and related charges. There are to be no financial subventions from the budgets of the → United Nations or of the United Nations University.

The Agreement was open to all States for definitive signature until December 31, 1981, and thereafter, for accession. Instruments of accession were deposited (→ Depositary) with the UN Secretary-General (Agreement, Arts. 6 and 8). The Agreement will enter into force after ten States from more than one continent have signed or acceded to it (Art. 7; → Treaties, Conclusion and Entry into Force). Until this requirement has been met, the international commission created by GA Res. 34/111 will act as the preparatory body of the University pending the establishment of the Council of the University. It is supposed that after the Agreement's entry into force, three years will be needed to appoint the administrative and planning bodies and to construct and organize the training unit for initial study and research.

3. Evaluation

The University for Peace is conceived as an institution on the international level, endowed with a legal personality, though restricted in its functions, and without being, of course, an international organization. It enjoys full autonomy, also with regard to the United Nations University. Here a clear deviation from the initial proposal has developed, based on the concern that financial difficulties experienced by the University for Peace might affect the functioning of the United Nations University. Only a future agreement between the two institutions will determine their exact relationship.

Of legal interest is the formal separation between the founding treaty (International Agreement) and the Charter as the proper constitution of the new institution, as these instruments are subject to differing rules for their modification. Whereas the Agreement may be amended only by the States parties (Agreement, Art. 5; → Treaties, Revision), it is within the competence of the Council of the University for Peace (on the proposal of a State party to the Agreement, the Rector or any other member of the Council) to make amendments to the Charter which are compatible with the basic aims of the University and the Agreement. Charter amendments require a two-thirds majority of the Council members (Charter, Art. 19). This demonstrates clearly the autonomy of the new institution.

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ECKART KLEIN

VETO

1. *Use Outside International Law*

(*a*) *Origin and notion*

In ancient Rome important offices were held by two persons who acted independently of each other, but who could prohibit by "veto" (literally "I forbid") a planned or perfected act of the other. Moreover, the Tribunes of the People possessed a power of veto as against acts of State officers generally. This system has not survived, but the term is still used to describe the right of one organ to prohibit acts of another. A not strictly correct, but popular, use of the term denotes the blocking effect of a negative vote of one member in a body which is subject to the unanimity rule. Common parlance uses the word veto also to describe the refusal of consent in systems of joint exercise of power.

A veto is suspensive if it does not destroy the organ's act, but enables it to reconsider, modify or confirm it, possibly by a qualified majority.

(*b*) *Use in constitutional law*

Veto power is still frequently provided for today, especially in the hands of a head of State *vis-à-vis* the legislature. Best known is the President's veto power in Art. I, section 7, paras. 2 and 3 of the Constitution of the United States. Under the constitutional separation of powers, a bill passed by both houses of Congress must be presented to the President for signature. If the President objects to the bill, he may return it unsigned within ten days. The bill can then become law only with approval on reconsideration by two-thirds majorities of both houses, which thereby act to "override the veto". If a bill is not returned (unsigned) by the President within ten days (Sundays excepted), it becomes law, unless the Congress has prevented the bill's return by adjourning, in which case the bill dies through what is known as a "pocket veto". In contrast, a "legislative veto", by which executive regulatory acts or regulations do not enter into force or are annulled if Congress or a Congressional Committee objects, is provided for by some American statutes.

Governors in most states of the United States and many heads of State, for example, in countries of Latin America, and in France, Greece and Portugal, wield a similar veto power against acts of the legislature. The Spanish Constitution of 1978 instituted the bicameral Parliament common in parliamentary democracies, but it specifies the veto to be the negative vote of the Senate on bills passed by the Cortés (Art. 90, Section 2). In Switzerland, the struggle between those arguing for direct and those for representative democracy during the 19th century often ended in the compromise solution that a number of citizens could secure the holding of a referendum on a bill voted on by the legislative body. This popular or devolutive veto still exists in two cantons. The Government of the Federal Republic of Germany has a veto power against bills and measures implicating extra expenses (Basic Law, Art. 113).

The individual veto of every member of a legislative body, as a corollary to a rule requiring unanimity in decision-making, was particularly evident in the Polish Diet from the 15th to the 18th centuries. This so-called "liberum veto" ultimately enabled each member to annul the entire proceedings and votes of the Diet and thereby to disrupt it.

(*c*) *Use in ecclesiastical law*

Here, the veto (also called "*jus exclusivae*") was known as the claimed customary right of Catholic monarchs to exclude candidates from papal elections (→ Holy See). The Church put an end to it in 1904. The "Irish veto" was a system proposed (though not adopted) during the negotiations between the Curia and the British Government in 1815 on the proposed new status of the Catholic Church in Ireland. Under it, the British Government would strike the names of individuals of doubtful loyalty from a list of can-

didates for the Irish bishoprics with the proviso that enough names remained on the list for a genuine choice to be made.

2. *Use in International Law*

(*a*) *General*

There is apparently no veto provided for in the supervisory mechanism over → protectorates, with the exception of the → treaty of February 27, 1884 between Great Britain and the South African Republic. Under this treaty, any treaty entered into by the South African protectorate was to be deemed to be agreed to unless Great Britain, within six months, gave notice that it conflicted with her interests (Art. IV, para. 2).

The Memel Territory was placed under the → sovereignty of Lithuania after World War I with an autonomy guaranteed by the Four Principal Allied Powers (→ Peace Treaties after World War I; → Autonomous Territories; → Guarantee). Art. 16 of her Statute of May 8, 1924 gave the Governor a right of veto against laws passed by the Chamber of Representatives if they were contrary to the status of the territory.

Statutes and draft statutes for internationalized cities (→ Free Cities) have introduced the veto mechanism to secure their international status or on an analogy to the veto right of a head of a State; Cracow, Shanghai, → Danzig, Tangier, → Trieste and → Jerusalem provide examples. The veto power is also to be found in constitutions established by international instruments for disputed entities, such as Crete and → Cyprus (→ International Régimes).

Mandates and trusteeship agreements (→ United Nations Trusteeship System) have not explicitly conferred veto powers, but the wide discretion given to the administrations supervising the territories would allow in effect for a veto to be exercised against acts of the local authorities. France in her Syrian mandate is reported to have made use of such powers.

Likewise, military occupants (→ Occupation, Belligerent) may use veto procedures for the control of occupied territory. Thus, the Allied High Commission for Germany, under the Occupation Statute of May 12, 1949, para. 5, had a veto power against ordinary German legislation (→ Germany, Occupation after World War II). After World War I, too, the Inter-Allied Rhineland High Commission (→ Rhineland Occupation after World War I) maintained that it had a veto power against German legislation and nomination of officials (Ordinances No. 1, of January 10, 1920, Art. 8, and No. 29, of July 13, 1920, Art. 4), but this power was disputed by the German authorities.

(*b*) *International organizations and agencies*

In older diplomatic practice, decisions of international organizations and conferences had to be unanimous (→ Congresses and Conferences, International; → Voting Rules in International Conferences and Organizations). The → League of Nations, in Art. 5 of its Covenant, adopted this rule for substantive decisions of the Assembly and Council. In other words, every member of these bodies had a veto power. Nevertheless, cases of actual casting of vetoes seldom arose, because from the outset the process of → negotiations tended to avoid bringing matters to a vote before unanimity was assured. An example concerned the proposed admission of Germany to the League, which had to be adjourned in the spring of 1926 under the menace of Brazil vetoing the proposal.

While international organizations with political functions in practice often strive to act on the basis of → consensus, international "service" organizations and → supranational organizations tend to adopt the majority rule. France attempted to introduce agreement to a kind of veto for the → European Economic Community in cases affecting → vital interests (Luxembourg Accords of January 28/29, 1966, (b)II), but it is not clear whether this agreement is anything more than a political guideline.

Vetoes still occur in various other forms and contexts, for instance in Art. 12 of the → Danube Convention of August 18, 1948. The Danube Commission decides on new projects by a majority, but cannot outvote the State in whose territory they are to be carried out. Similarly, the Assembly and the Supervisory Board of the → Moselle Corporation cannot take decisions which directly concern Luxembourg territory unless the members representing Luxembourg vote with the necessary two-thirds majority (Charter,

Annex to the Moselle Treaty of October 27, 1956, Arts. 15(3) and 21(1)). The Council of Directors of the nuclear reactor at Halden, Norway (→ Organisation for Economic Co-operation and Development, Nuclear Energy Agency), cannot decide on security matters unless the member delegated by the Norwegian Institute for Nuclear Energy votes with the two-thirds majority (Treaty of October 17, 1963, Art. 2(d)). In the → Organization of Arab Petroleum Exporting Countries, the three-quarters majority required for the approval of new members must include the votes of the founding members (Agreement of the Organization of Arab Petroleum Exporting Countries, Art. 7(a) (3)).

In cases of → weighted voting, a veto power may result from a blocking minority, as in the case of → Intelsat, where the Communication Satellite Corporation on the Board of Governors possesses 40 per cent of the votes. The obstructive effect of this voting right can only be overcome if the voting results in a minority consisting of three or less members of the Board (Agreement, Art. IX(j)).

The statute of the → Council for Mutual Economic Assistance (as amended on June 21, 1974, Art. IV(3)) forbids members who are interested in the matter from being outvoted; at the same time, it allows members to declare themselves to be not interested, with the effect that the decision or recommendation is adopted but does not bind the dissenting members. In the first case, there is a veto in the larger sense; in the second, no veto power is needed to preserve the interests of the dissenting State.

An opportunity to exercise a veto is also offered when the Administrative Council of the European Patent Office (→ European Patent Organisation) has to decide on financial matters. Every member, after the casting individual votes, can demand that there be weighted voting (Art. 36, European Patent Convention of October 5, 1973).

(c) *The UN Security Council*

The most striking example of a veto power in the larger sense is contained in Art. 27(3) of the → United Nations Charter. Substantive decisions of the → United Nations Security Council require the concurring vote of the permanent members. This compromise, worked out at the → Yalta Conference, was explained to the San Francisco Conference in a paper of June 7, 1945 as being grounded on the consideration that it is the → Great Powers that must bear the burden of security measures and that they therefore ought not to be subject to being outvoted (Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol. 11, p. 711). Practice, however, has allowed decisions to attain validity in spite of the abstention or absence of permanent members. There were initially difficulties with what was called the "double veto"; Section II(2) of the paper of June 7, 1945 stated that the preliminary question whether a matter is procedural (see UN Charter, Art. 27(2)) or substantive is itself subject to the veto proviso.

The veto has hindered the activity of the → United Nations considerably, and at times the admission of new members has suffered thereby. Many plans have been discussed to limit or circumvent this veto power in the Security Council. In particular, the → Uniting for Peace Resolution of 1950 was an attempt to devolve the competence for security measures (→ United Nations Peacekeeping System) from a hamstrung Security Council to the → United Nations General Assembly.

Statistics on use of the veto have not been consistently recorded, because some of them count negative votes on one question by several permanent members as so many vetoes. Leaving these cases aside, there seem to have been, up to mid-1981, 110 vetoes by the Soviet Union, 2 by China, 3 by France, 6 by the United Kingdom and 15 by the United States, which was in principle hostile to the veto power and until 1970 did not make use of it.

As matters stand, draft resolutions are often not put to a vote, and delicate matters may not be brought before the Security Council at all. There is little hope that the Charter will be amended, because this requires ratification by all the permanent members (Art. 108), that is to say, amendment of the Charter itself is also subject to veto by these members.

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FRITZ MÜNCH

VIENNA CONVENTION ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS OF A UNIVERSAL CHARACTER

1. Historical Background

When the → United Nations General Assembly considered the draft articles on diplomatic relations submitted to it by the → International Law Commission (ILC) in 1958, it decided, acting on a French proposal, to request the ILC to consider the relations between States and intergovernmental international organizations (UN GA Res. 1289 (XIII) of December 5, 1958). It specified that this should be done "at the appropriate time, after study of diplomatic intercourse and immunities, consular intercourse and immunities and *ad hoc* diplomacy has been completed by the United Nations" (→ Vienna Convention on Diplomatic Relations (1961), → Vienna Convention on Consular Relations (1963), and Convention on Special Missions (1969); → Special Missions).

The ILC studied this subject from 1963 to 1971 and submitted to the General Assembly draft articles (YILC, 1971 II, p. 278) which were in turn referred to a UN Conference which met in Vienna in February/March 1975. On March 14, 1975, the Conference adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. As of December 1981, the Convention had not yet entered into force; the process of ratification has been relatively slow.

2. Major Provisions

The Convention consists of a → preamble and 92 articles divided into six parts. The first part (Introduction) is devoted to the use of terms and the Convention's relationship to other international agreements. The second part (Missions to International Organizations) covers both permanent missions of member States and permanent observer missions of non-member States (→ Diplomatic Agents and Missions; → International Organizations, Observer Status). The third part (Delegations to Organs and Conferences) concerns delegations sent by States to organs of international organizations or to conferences convened by international organizations. The fourth part (Observer Delegations to Organs and Conferences) contains a general provision making applicable to observer delegations the provisions of the corresponding articles on delegations. The fifth part (General Provisions) deals, *inter alia*, with the respect for the laws of the host State, non-discrimination (→ States, Equal Treatment), and conciliation (→ Conciliation and Mediation). The sixth part contains the final clauses (→ Treaties).

(a) Scope of Convention

International organizations of a universal character to which the Convention applies are identified in it as "the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibilities are on a worldwide scale" (Art. 1; → International Atomic Energy Agency; → United Nations, Specialized Agencies). The Convention provides that its nonapplication to other international organizations is without prejudice to the application to such

organizations of any of the Convention rules which would be applicable under → international law independently of the Convention.

(b) *Permanent missions*

A number of the provisions of the Convention are modelled on the corresponding provisions of the Vienna Convention on Diplomatic Relations of 1961, as international intercourse within the framework of international organizations resembles in certain respects diplomatic relations between States (→ Diplomacy; → Diplomatic Relations, Establishment and Severance). Permanent missions carry out their activities by methods and in a manner similar to those employed by inter-State diplomatic missions. Their composition and structure are also similar. The Convention codifies the existing practice of conceding to members of permanent missions the same privileges and immunities accorded to members of diplomatic missions (→ Diplomatic Agents and Missions, Privileges and Immunities; → International Organizations, Privileges and Immunities).

(c) *Permanent observer missions*

The Convention assimilates permanent observer missions to permanent missions. The Convention departs from practice existing up to then by according to members of permanent observer missions diplomatic privileges and immunities in recognition of their representative character. This development was accepted without difficulty.

(d) *Delegations and observer delegations*

The Convention also departs from existing rules by according diplomatic privileges and immunities to both delegations and observer delegations to organs and conferences. This was opposed by a number of delegations, in particular those representing States which serve as host States to international organizations. These delegations opposed any extension of the privileges and immunities provided for members of delegations in the Headquarters Agreements and in the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, which limit immunity from jurisdiction to official acts.

(e) *Entry into force; implementation*

The Convention makes a distinction between its entry into force (Art. 89), which is effected by ratification or accession by 35 States, and its application to a particular organization (Art. 90), for which acceptance by the host State and a decision of implementation by the organization concerned are required (→ Treaties, Conclusion and Entry into Force).

3. *Special Legal Problems*

Certain Convention provisions take into account the legal problems encountered in the representation of States at international organizations and conferences which differ from those encountered in the area of traditional inter-State diplomacy. In the latter case, the relationship is a bipartite one between the "sending State" and the "receiving State". In the former, the relationship has a tripartite character which involves the "sending State", the "international organization", and the "host State" in whose territory the representatives of the "sending State" enjoy the legal status and privileges and immunities conceded to them.

(a) *Nature of permanent missions*

The rules governing the establishment of permanent missions and permanent observer missions to international organizations, as developed in practice and codified in the Convention, reflect a basic difference between these missions and diplomatic missions. The establishment of diplomatic missions takes place by mutual consent. The Convention provides that member States may establish permanent missions and that non-member States may establish permanent observer missions if the rules of the organization so permit (Art. 5; → International Organizations, Internal Law and Rules). It confirms the non-obligatory character of these types of missions, according States an option to be exercised at their discretion. On the other hand, it makes it clear that such an option can be made use of if the internal rules so permit.

(b) *Accreditation of representatives*

Representatives to international organizations are accredited to the organizations rather than to

host States. The Convention provides that:

"The credentials of the head of mission shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the organization so permit, by another competent authority of the sending State and shall be transmitted to the Organization." (Art. 10).

Unlike the case of the head of a diplomatic mission to a State, no prior approval (*agrément*) by the organization is required.

(c) *Special remedies of the host State*

Due to the absence of the remedies available to the receiving State in inter-State diplomacy (withholding the granting of *agrément* or declaring a diplomatic agent *persona non grata*), the Convention provides certain special remedies for the host State. It states that:

"In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission, the delegation or the observer delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State." (Art. 77(2)).

The Convention also recognizes the right of the host State to take such measures as are necessary for its protection. Furthermore, the Convention sets up an elaborate process for consultations and conciliation if a dispute arises out of the application or interpretation of the Convention between two or more States parties. Provision is made for the possible participation of the organization concerned in such consultations or conciliation.

4. *Significance*

The Convention marks the first piece of codification by the International Law Commission on a subject of the law of international organizations (→ Codification in International Law). All previous Commission work was concerned with subjects of traditional international law, i.e. the law of inter-State relations. The Convention is a product of close cooperation between the Commission and the legal divisions of the Secretariats of the UN and of the Specialized Agencies (→ International Secretariat). Two questionnaires were addressed to these legal divisions to elicit information on their practice. On the basis of the replies, the UN Secretariat in 1967 issued a study entitled "The Practice of the UN, Specialized Agencies and IAEA concerning their Status, Privileges and Immunities" (YILC, 1967 II, p. 154).

The Convention has two overriding aims. Firstly, notwithstanding the diversity of international organizations and their heterogeneous character, the Convention seeks to establish a common denominator. Secondly, it attempts to provide general rules to regulate the law on diplomatic relations between States and international organizations in the absence of regulation on any particular point by an individual international organization.

Finally, the Convention contains in Art. 4 a saving clause whose purpose is to safeguard the position of existing international agreements regulating the same subject-matter as the Convention, and in particular Headquarters Agreements and the Conventions on Privileges and Immunities. The Convention, while intended to provide a uniform régime, is thus without prejudice to different rules which may be laid down in previous or future agreements and conventions (cf. → Treaties, Conflicts between).

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VOTING RULES IN INTERNATIONAL CONFERENCES AND ORGANIZATIONS

1. Notion; Significance

Normally, international organizations strive at → consensus in their decision-making processes, even though decisions by majority vote are often constitutionally possible. Consensus offers the advantage that the decision is supported by all members, which may promote its implementation.

In some cases, consensus is required by the presence of a constitutional provision that decisions are to be taken unanimously. Such a requirement offers a guarantee that no member can be outvoted and may, therefore, remove an important barrier to securing membership of States which expect to be in a minority position. On the other hand, a constitutional requirement of unanimity will actually severely limit the possibilities for consensus, as it takes away an important incentive to compromise: When majority decisions are possible, a dissenting member may prefer consensus on an unattractive compromise to a majority decision on an unacceptable proposal. In contrast, when unanimity is required, all members have a right of → veto, and need not compromise at all. Therefore, the possibility of voting is important, even in international organizations which rarely take a vote in fact.

2. Voting Power

International governmental organizations are usually established on the principle of sovereign equality (→ States, Sovereign Equality; → International Organizations, General Aspects). This means that the size and population of member States are not relevant criteria; the most important element is that they are sovereign entities with their own governments. As equals, all governments therefore have the same voting power in international organizations.

There are exceptions to this rule, however. Some international organizations have a system of → weighted voting by which the voting power is related to the importance of the member in the organization. In the → United Nations Security Council, the votes of the five permanent members are of a different nature from those of the other members, because of their right of veto.

Normally, the voting power is exerted by delegates on behalf of the governments of the member States. The most important exception to this rule is the Conference of the → International Labour Organisation, where the member governments' delegates have only half of the voting power, the other half being divided equally among delegates of workers and employers.

3. Methods of Voting

(a) Simultaneous open voting

The fastest way of voting is by a show of hands. Sometimes international conferences have refined this system by asking the delegates to raise the name-plates which indicate the seating of the delegations. This may facilitate counting, and it prevents voting by more than one member of a delegation. However, rapid voting by a show of hands may not always be accurate, and it does not record which delegations have supported the proposal.

(b) Recorded voting

When a delegation would like a vote to be registered, it may request a roll-call. In most international organizations, this request must be granted if it is supported by at least one other delegation. In some cases no support is needed, while in other cases two other delegations must express their support. In a roll-call, the secretary of the meeting will read the names of all member States entitled to participate in the voting. Each delegation must reply with "yes", "no", or "abstention". When no reply is given, the delegation will be registered as "absent". Recorded voting is

accurate, but very time-consuming, particularly in large conferences.

(c) *Mechanical voting*

Some conference halls offer facilities for mechanical voting. In front of each delegation are three buttons, marked "yes", "no" and "abstention". A board on the wall indicates which button is pressed, while a machine records and counts the votes. The advantages of the simultaneous open voting and recorded voting systems can be combined by this system.

(d) *Secret voting*

Most international organizations use secret voting only for the election of persons, but in some international organizations, any delegation may request a secret vote on any matter. This request must be granted if it is supported by one other delegation (as in the → Universal Postal Union and the → World Meteorological Organization) or by a majority of the meeting (as in the → World Health Organization). Secrecy of the voting may influence its outcome. Delegates will more readily vote as they see fit, without having to take account of the views of their own government or of other States. For the election of persons, it may be proper if support remains anonymous; for political matters, the absence of all control over delegates' votes probably outweighs the advantages.

(e) *Vote by correspondence*

International organizations sometimes arrange for voting by post, thus freeing them from having to wait for a meeting to decide matters of some urgency. This is particularly important for organs whose meetings are separated by long intervals. The main disadvantage of this method of voting is the absence of debate. Under a written procedure, it may be hard for a delegation to persuade others.

4. *Required Majority*

(a) *Kinds of majority*

The constitutions of international organizations require different kinds of majorities (simple, qualified, absolute and relative), usually depending on the importance of the decision.

A simple majority is the smallest possible majority of the voters who actually vote, thus disregarding abstentions. Its main advantage is that a simple majority can usually be reached. Voting in cases involving a number of solutions is normally arranged by "pairing" and eliminating choices until the final choice is presented. If a deadlock occurs, voting is usually repeated later on, when some more members may be present or when one or more members may have changed their views. Deadlocks may also be broken by giving a deciding vote to the president or by drawing lots. Simple majorities are almost always used for procedural and related questions, such as the election of officers for a meeting.

A qualified majority is any required majority larger than a simple majority. The most common qualified majority is two-thirds of the votes counted. Its main advantage is that no decision will be taken that finds only weak support. The principal disadvantage is that it may lead to a deadlock when both of two solutions are supported by less than two-thirds of the meeting. Qualified majorities, therefore, should not be required for questions in need of immediate solution. They are particularly useful when an acceptable *status quo* exists, as they prevent alteration unless a qualified majority wishes it.

An absolute majority is the smallest possible margin of votes over the number which can be obtained at the same time for any other solution. When there are no abstentions, an absolute majority in a choice between two options is the same as a simple majority (anything over 50 per cent). Thus, the two notions are sometimes confused. In multiple elections, the absolute majority may be substantially higher than the simple majority. As an example, assume that from 7 candidates 5 must be elected by a conference of 50 delegations. Each delegation will then write 5 names on its ballot sheet. Actually, 50 times 5 votes will be cast, which means that each of the 7 candidates can receive 35 votes, 6 of them can obtain 41, but no more than 5 can receive 42. To prevent the election of more than 5 candidates the absolute majority should, therefore, be 42. Very few international organizations require an absolute majority in multiple elections. Usually a relative majority is considered sufficient.

A relative majority is any number of votes

larger than the number of votes obtained for an alternative. In a choice between two options, a relative majority is the same as a simple majority. In a multiple election, it may be more or, when there are many candidates, less than a simple majority. When 50 delegations elect 5 persons out of 7 candidates, 4 candidates may obtain 40 votes, one 32, one 30 and one 28. The candidates with 40 and 32 votes have then obtained a relative majority and may be elected, irrespective of the fact that perhaps a large majority of the delegations who supported the last candidate might have preferred the one with 30 votes over the one with 32. Most international organizations accept a relative majority for multiple elections, provided that it also constitutes a simple majority of the delegations voting.

(*b*) *Calculation of majorities*

Sometimes a majority of all members of an organization is required, so that a proposal is adopted only when more than half of the members support it. When a substantial number of the members do not participate in the meeting, it may be difficult to obtain this majority.

More often, a majority of the members present and voting is considered sufficient. It is then presumed that the non-attending members consider the matter of insufficient importance, so that their opinions can be neglected. This presumption is acceptable only when the questions involved have been previously announced on the agenda distributed for the meeting.

Delegations may abstain from voting. They will then not be counted for the majority required. Therefore, in a meeting of 50 delegations, a proposal may be adopted, for example, by 10 votes in favour and 8 against if the other 32 delegations abstain. Abstention does not bar unanimity. This rule is so strong that even when "concurring votes" are required, such as those of the permanent members of the Security Council, abstentions will not block adoption. The → International Court of Justice accepted this practice in its 1971 Advisory Opinion on Namibia (→ South West Africa/Namibia (Advisory Opinions and Judgments)).

A vote taken contrary to the rules for the voting procedure is invalid. Invalid votes are rare except in multiple elections, when some delegations may write too many names on their ballot sheets. In many international organizations, writing too few names in a multiple election also invalidates the vote. This practice is employed in order to prevent favouring a particular region. In a multiple election, when one candidate for each of five regions must be chosen, and one region votes for its own candidates only, then the candidates of that region may obtain so many more votes than those of other regions as to elect two from that region, to the detriment of another region's candidates. Invalid votes are counted as abstentions.

5. Effect of Voting

Voting is an act of the organization, meant to promote its decision-making. Normally, voting has no other consequence than a proposal's acceptance or rejection. The effect of the proposal, if accepted, is the same for all members irrespective of how they have voted. Though this rule has never been legally challenged, the political impact of the measure will be influenced by the results of the voting, especially when non-binding resolutions are adopted (→ International Organizations, Resolutions). States are legally free to follow a recommendation or not. Their vote against its adoption will normally be a reason not to apply the resolution.

A formal reservation to a resolution is usually impossible (cf. → Treaties, Reservations). According to the → Court of Justice of the European Communities in Case 39/72 (EC Commission v. Italy; ECR 1973, p. 101, at p. 115), such a reservation would violate the principle of the equality of the member States.

The → Organisation for Economic Co-operation and Development and the → Council for Mutual Economic Assistance can take binding decisions if they are made unanimously. In both organizations, abstentions do not prevent adoption by unanimous vote, but they will mean that the decision will not be binding on the members which abstained. These exceptions to the rule that the manner of voting has no influence after the adoption of a proposal are based on express constitutional provisions.

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HENRY G. SCHERMERS

WEIGHTED VOTING

1. *Sovereign Equality*

Our present system of international law is based upon the principle of sovereign equality (→ States, Sovereign Equality). It is a legal system operated between governments, rather than between nations – archontocratic rather than democratic (from the Greek words *archontes* (governors) and *demos* (people), and *kratos* (power)). Though nations may be very different, governments are similar and should, therefore be treated alike. Because of this notion of sovereign equality, all States usually have the same voting power in international organizations (→ Voting Rules in International Conferences and Organizations).

Equality of voting power is acceptable to all in organizations which have only the power to recommend, and in organizations which adopt their decisions by unanimity, because no State can be bound against its will. It may cause problems, however, when international organizations can make rules which are binding, directly or indirectly, on the inhabitants of the member States. It seems obviously unfair that the representatives of the Seychelles and São Tome, which together have less than 150 000 inhabitants, can outvote the delegate of India who represents over 300 million people. It would also be unfair if in a shipping organization the representatives of land-locked Nepal could exert the same voting strength as those of Japan.

One way to cope with such unfairness is to weight the voting power of the member States in proportion to their relative political power, size of population, or interest in the work of the organization.

2. *Existing Systems*

At the Paris Peace Conference of 1919 the votes of the → Great Powers were counted five-fold, those of the medium-sized powers two-fold or three-fold, and those of the small States only once (→ Versailles Peace Treaty; → Peace Treaties after World War I). The weighting was rather arbitrary and did not fully reflect the differences in political power, population or interests, but it was a break with the literal application of the principle of sovereign equality.

In present-day international organizations, weighted voting is still rare. Its introduction is hampered by the fact that for any system of weighting, any agreement on the assigning of weighted voting shares proves extremely difficult. Distributing power relative to the size of the populations of the member States is unacceptable for all but a few populous States; national income or the size of the financial contribution to the organization (→ International Organizations. Financing and Budgeting) would unjustifiably favour the rich; and interest is a nebulous criterion. Only organizations which serve a specific, measurable interest can easily introduce weighted voting. Two groups of international organizations come into this category: the financial organizations (→ Financial Institutions, Inter-Governmental) and the commodity councils (→ Commodities, International Regulation of Production and Trade). Outside these groups, weighted voting is rare.

(*a*) *Financial organizations*

Weighted voting exists in the → International Monetary Fund (IMF), the → International Bank for Reconstruction and Development (IBRD), the → International Finance Corporation (IFC), the → International Development Association (IDA), and the → regional development banks.

All these organizations use a double system for the weighting of votes. Part of the votes are attributed on the basis of sovereign equality, the rest on the basis of financial interest.

In the universal organizations, the sovereign equality element is relatively small. In the IBRD, 11 per cent of the votes are distributed on the basis of sovereign equality, 89 per cent on the basis of shares held. As a result of this, the strongest member (United States) holds 22.74 per cent of the votes, which is 250 times as much as

the voting power of the weakest members (e.g. the Maldives have 0.09 per cent).

In the regional development banks, the sovereign equality element is larger. In the African Development Bank it even comes close to half of the votes. As a result, the discrepancy between the stronger and the weaker members is smaller. In the Asian Development Bank, the strongest members (Japan and the United States) hold 17.7 per cent of the votes, or 24 times as much as the weakest member (Western Samoa), which has 0.74 per cent. In the African Development Bank, the strongest member (Egypt) holds 8.7 per cent of the votes, which is not quite five times as much as the weakest member (Togo) holding 1.8 per cent.

As a result of their weighted voting, the richer States dominate the financial organizations. This was considered necessary in order to obtain the financial means from them needed for the organizations' operation, as very few States would have offered capital to the regional development banks without some guarantee of control.

(*b*) *Commodity councils*

There are two conflicting interests in all commodity councils: those of producers and those of consumers. Neither group would want to join an organization dominated by the other.

Most commodity councils, therefore, attribute the same number of votes to each group. The exporting and the importing States each have a total of 1000 votes. The distribution of the votes within each group is partly based on the sovereign equality element (each member receiving at least some votes) and partly on the amount of production or consumption. It is difficult to obtain full equality, as a group of a small number of producer States will be more cohesive than a large group of consumers, in particular if some consumers have only a limited interest in the product.

(*c*) *International Fund for Agricultural Development*

The → International Fund for Agricultural Development has three categories of members: Western States, oil-producing States (cf. → Organization of Petroleum Exporting Countries) and → developing States. Each category has 600 votes which are divided on the grounds of sovereign equality and financial contribution. In the Western group, 105 votes are distributed according to sovereign equality; in the oil-producing group, 150; and in the group of the developing States, all 600. Weighted voting, which depends on the amount of contribution, therefore, exists in the first two groups only.

(*d*) *Council of the European Communities*

A weighted voting system based on a general (and, therefore, unmeasurable) interest in the organization exists in the Council of the → European Communities. Germany, France, Italy and the United Kingdom have ten votes each, Belgium, Greece and the Netherlands five, Denmark and Ireland three, and Luxembourg two. However, the weighted voting formula is used very infrequently, as the Council takes important decisions by → consensus.

3. Evaluation

It is hard to make a general evaluation of weighted voting on the basis of the existing experience, as the organizations which use it cannot easily be compared. In 1975, a group of experts reporting on the structure of the organizations of the → United Nations system concluded that the voting systems in the IMF, the IBRD, the IFC and the IDA took insufficient account of the interests of the developing States and needed revision (cf. → International Economic Order). In most commodity councils, the voting system receives general support.

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WEIGHTS AND MEASURES, INTERNATIONAL REGULATION *see* International Bureau of Weights and Measures

WORLD BANK *see* International Bank for Reconstruction and Development

WORLD BANK ADMINISTRATIVE TRIBUNAL

1. Historical Background

In 1980, the Bank Group, which is made up of the → International Bank for Reconstruction and Development (IBRD), the → International Development Association (IDA) and the → International Finance Corporation (IFC) (but not the → International Monetary Fund (IMF), which remains a major → United Nations Specialized Agency without an administrative tribunal) established the World Bank Administrative Tribunal (WBAT) to provide for judicial settlement of certain types of disputes between the organizations comprising the Bank Group and their staff. With the Bank Group insisting on immunity from the jurisdiction of national courts in employment-related disputes between the organizations and staff members, there was an obvious need to provide the staff with a judicial forum. This need had been particularly sharpened by the tension between the organizations and the staff generated by the organizations' intentions to reduce certain staff entitlements in derogation of what the staff regarded as its acquired rights. Another factor leading to the establishment of the Administrative Tribunal was the organizations' concern that the absence of such a tribunal could be viewed, by some of the national courts which have been asked by staff members to assert jurisdiction over employment disputes, as a consideration supporting an assertion of jurisdiction. The Bank Group decided not to affiliate by agreement either with the → United Nations Administrative Tribunal (UNAT) or with the → International Labour Organisation Administrative Tribunal (ILOAT) (→ Administrative Tribunals, Boards and Commissions in International Organizations). Rather, it decided to set up its own judicial forum on the ground that the objects and nature of the Bank Group are different from those of other organizations within the → United Nations system. The Statute of the WBAT was inspired by the Statute of the UNAT and to a lesser extent by the Statute of the ILOAT.

Like other administrative tribunals, the WBAT is an international tribunal of limited jurisdiction (*juridiction d'attribution*) and not of general jurisdiction (*juridiction de droit commun*). (See → Judgments of ILO Administrative Tribunal (Advisory Opinion), ICJ Reports 1956, p. 77, at p. 97; → International Organizations, Internal Law and Rules.)

2. Composition of the Tribunal

The WBAT, like the UNAT, is composed of seven judges, no two of whom may be nationals of the same State. Art. IV of the Statute of the WBAT provides that the judges must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence. Such qualifications are not present in the Statutes of the UNAT and the ILOAT, but are comparable to those laid down in Art. 2 of the Statute of the → International Court of Justice (ICJ) for election of judges to the ICJ. The members of the WBAT are appointed by the Executive Directors of the IBRD from a list of candidates drawn up by the President of the IBRD after appropriate consultation. The judicial term of office is three years, reappointment being allowed.

3. Competence

(*a*) Ratione personae

According to Art. II(1) of the Statute, the WBAT shall be open to certain claims by "a member of the staff of the Bank Group". The expression "member of the staff" is defined in Art. II(3) as "any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan". This provision is intended to embrace individuals who receive appointments of the following types: regular, fixed-term, temporary, part-time, on secondment, as individual consultants, as Executive Director's assistants or as trainees. In thus restricting the jurisdiction of the Tribunal, the Statute of the WBAT follows the limitations found in the UNAT Statute.

(*b*) Ratione materiae

Art. II(1) of the Statute provides that the Tribunal may

"hear and pass judgment upon any application

> by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words 'contract of employment' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan."

This provision is modelled on Art. 2(1) of the Statute of UNAT. According to the legislative history of the UNAT provision, Art. II does not permit challenging the validity of an administrative rule or regulation. As regards remedies (→ International Organizations, Legal Remedies against Acts of Organs), if WBAT finds that the application is well founded, it must order the rescission of the decision contested or the specific performance of the obligation invoked. It also fixes the amount of compensation to be paid for the injury sustained by the applicant, if the President of the respondent institution, within 30 days of the notification of the judgment, decides that the applicant should be compensated without further action being taken. Art. XII of the Statute of the Tribunal follows Art. 9 of the Statute of UNAT in this respect, except that the normal ceiling of compensation is the equivalent of three years – rather than two years – net pay. Like UNAT, the WBAT may, in exceptional cases, order the payment of higher compensation. The choice between compensation and specific performance lies with the President of the respondent institution, and not with the Tribunal. In this respect also, the Statute of the WBAT follows the model of the Statute of the UNAT rather than that of the ILOAT, whose Statute (Art. VIII) empowers it to order reinstatement of a wrongfully terminated employee. ILOAT's power of ordering specific performance has, however, been exercised only on a few rare occasions.

Under Art. XVII of its Statute, the WBAT is competent to hear applications concerning causes of complaints arising subsequent to January 1, 1979.

4. Procedure

Under Art. VII of the Statute, the WBAT may, subject to the provisions of the Statute, establish its own rules. Such rules were adopted by the Tribunal on September 26, 1980. They concern the conduct of the sessions, proceedings, remand of the case, intervention, and other matters. The Statute itself provides in Art. II that applications are not admissible unless the applicant has exhausted all other remedies available within the Bank Group, but such remedies can be bypassed when the applicant and the respondent institution agree. Applications must be filed within 90 days of certain enumerated events. The Tribunal may waive the 90 day time-limit and the requirement of exhaustion of internal remedies, under exceptional circumstances. Rule 18 of the Rules of the WBAT allows individuals who would otherwise qualify as parties under the Statute, to intervene at the discretion of the Tribunal. Rule 19 provides for the right of intervention (by notice, rather than application) by organizations which might be affected by the Tribunal's judgment.

5. Applicable Law

Art. II of the Statute of the WBAT provides for the applicability of contracts of employment and terms of appointment, including all pertinent rules and regulations, as well as of the provisions of the Staff Retirement Plan.

In its decision No. 1 (In the matter of de Merode et al. v. The World Bank (June 5, 1981)), the WBAT elaborated on the law to be applied. The WBAT stated that while the contract may be the *sine qua non* of the relationship of an employee with the Bank, it remains no more than one of a number of elements which collectively establish the ensemble of conditions of employment operative between the Bank and its staff members. In addition to the contract, account must be taken of the actual conditions in which the appointment has been made. As the Bank has at present no staff rules or regulations, one must look to the Articles of Agreement of the Bank and to the By-Laws and, depending on their content, to certain manuals, circulars, notes and statements issued by the management of the Bank, as well as to certain other sources.

Next, the WBAT stated that the decision of the Board of Governors to establish the Tribunal introduced into the conditions of employment the right of recourse to this Tribunal, in accordance with the conditions laid down in the Statute; this right thus forms an integral part of the legal relationship between the Bank and its staff members.

Elements of the legal relationship between the

Bank and its personnel are also to be found in some, but not all, of the provisions of the Personnel Manual, the Field Office Manual, various administrative circulars and in certain notes and statements of the management. Simple statements of current policy or of practical or purely procedural methods of operation do not constitute conditions of employment. The practice of the organization may also, in certain circumstances, become part of the conditions of employment, but this must be limited to the practice which evidence shows is followed by the organization in the conviction that it reflects a legal obligation.

Another source of the rights and duties of the staff of the Bank consists of certain → general principles of law. The Tribunal has stated that its task is to decide internal disputes between the Bank and its staff within the organized legal system of the World Bank, and that it must apply the internal law of the Bank as the law governing the conditions of employment. The Tribunal noted that each international organization has its own constituent instrument, its own membership, institutional structure, functions, measure of legal personality, and personnel policy (→ Civil Service, International). It held the differences between one organization and another to be so obvious that the notion of a common law of international organization must be subject to numerous and sometimes significant qualifications (→ International Organizations, General Aspects). However, these differences do not exclude the possibility that similar conditions may affect the solution of comparable problems. The Tribunal did not consider it necessary to rule whether certain similar features in the jurisprudence of the various administrative tribunals amount to a true *corpus juris* shared by all international officials. It declared, however, that it was free to take note of solutions worked out in sufficiently comparable conditions by other administrative tribunals, particularly those of the UN family. In this way the Tribunal may take account both of the diversity of international organizations and the special character of the Bank without neglecting the tendency towards a certain *rapprochement*.

6. *Review of Decisions*

Under Art. XIII of the Statute, the WBAT may permit a request for a revision of a judgment within a period of six months after discovery of new facts which were unknown at the time of the judgment and which by their nature would have a decisive influence on it. Unlike the Statutes of UNAT and the ILOAT, the Statute of the WBAT does not envisage the possibility of recourse to the ICJ for review of judgments.

7. *Evaluation*

The Statute of the Tribunal is a solid but conservative instrument. The establishment of the WBAT, which comprises highly eminent jurists, is a welcome event for the members of the staff of the Bank Group, who will now have a judicial forum in which to litigate their employment claims against the employing organizations, and for all those who are interested in the rule of law in international life. Given the fact that the Tribunal has so far rendered only four decisions, including one major one, it is too early to evaluate its performance.

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THEODOR MERON

WORLD FOOD COUNCIL

1. *Historical Background and Establishment*

In response to the worsening world food situation, the World Food Conference, meeting in Rome in November 1974, called upon the → United Nations General Assembly to establish a World Food Council (Res. XXII of November 16, 1974). The General Assembly set up this Council on December 17, 1974, following the recommendations of the World Food Conference concerning the terms of reference (UN GA Res. 3348 (XXIX)).

2. *Structure and Finances*

The World Food Council functions at the ministerial or plenipotentiary level as an organ of

the → United Nations, reporting to the General Assembly through the → United Nations Economic and Social Council (ECOSOC). The Council consists of 36 members, nominated by ECOSOC and elected by the General Assembly for a term of three years. One-third of the members retire every year; the retiring members are eligible for re-election. The geographical distribution of members is: nine from African States, eight from Asian States, seven from Latin American States, four from Eastern European States and eight from Western European and other States.

Since 1975, the Council has held one regular session a year at the ministerial level, preceded by a preparatory meeting at the level of deputies. Special sessions have not yet occurred but can be held under the rules of procedure (WFC/51, Rule 2). At its regular session every year, the Council elects a bureau from its members, which consists of a president, three vice-presidents and a *rapporteur*. The rules of procedure provide for the participation of non-members of the Council at its sessions without the right to vote. On average, some 30 to 40 non-member States are represented at each session. Several UN organs, organizations and → United Nations Specialized Agencies participate more or less regularly, as do many intergovernmental and → non-governmental organizations. Decisions are taken by a majority of the members present and voting, each member having one vote (→ Voting Rules in International Conferences and Organizations).

The 33-member secretariat (→ International Secretariat) shares headquarters in Rome with the → Food and Agriculture Organization of the United Nations (FAO) and the → World Food Programme (UN/FAO). It is headed by an Executive Director and its main functions are to service the sessions and to provide contacts between the governments of the member States.

The Council is financed through the ordinary budget of the UN (→ International Organizations, Financing and Budgeting). In terms of total direct costs, the UN Proposed Programme Budget for the Biennium 1982–1983 provides the Council with US $4 830 000 plus apportioned costs of US $556 000, all being designated for administrative and technical purposes (UN GA Official Records, 36th Session, Supp. 6, Vol. 1, p. 90).

3. Activities

The Council is the major political body in the world dealing exclusively with food problems. To help tackle these mammoth problems, it develops global objectives and outlines the measures needed to attain them. It also encourages the creation of institutions and food programmes and tries to mobilize support for them among States. The Council also monitors the implementation of World Food Conference resolutions on food production, nutrition, food security, food trade, food aid and other related matters by States and bodies within the UN system.

The most prominent achievement of the Council has been its success in encouraging the establishment of the → International Fund for Agricultural Development. Despite the Council's untiring efforts since its inception, three other major goals have not, however, yet been reached. Firstly, the minimum annual food aid target of ten million tons of grain, a goal set by the World Food Conference, has not yet been reached; the new Food Aid Convention of March 11, 1980 raised the guaranteed minimum level to only 7.6 million tons annually even though a higher aid level had already been reached in previous years. Secondly, despite commitments made by several countries, the International Emergency Food Reserve has not yet been filled up to the 500 000 ton level proposed by the General Assembly. Thirdly, a new Wheat Trade Convention still seems far from conclusion.

The "Manila Communiqué" which emanated from the Council's 1977 session contained the world's first integrated "programme of action to combat hunger and malnutrition". The Council, *inter alia*, called on governments and the appropriate UN agencies, especially the FAO, to assist the food priority countries in achieving a four per cent growth rate in food production. (In 1976, the Council had considered a catalogue of criteria for the identification of "food priority countries" in need of special assistance.) Food-surplus countries were also asked to convert part of their stocks into nationally-held reserves for use by food-deficit countries, as well as to contribute to price stability. Concerning adequate food trade conditions – an essential element in the fight against hunger – the Council called for a speedy implementation of the → United Nations Con-

ference on Trade and Development (UNCTAD) Integrated Programme for Commodities with particular reference to foodstuffs and urged that the developed countries should open their markets to a greater extent than before to food products from the → developing States (→ Commodities, International Regulation of Production and Trade).

In the "Mexico Declaration" of 1978, the Council, besides dealing with problems of food production and development assistance (→ Economic and Technical Aid), urged governments to take the necessary steps to eradicate within a decade vitamin A deficiency and endemic goitre. The Council also called on governments and international organizations to consider projects contributing to nutritional improvement by way of education, training and primary health care.

In 1979, the Council encouraged developing States to consider the establishment of a high-level national food-management authority. The Council recognized that the solution of these States' food problems is their own primary responsibility, despite the need for assistance.

The 1980 conclusions and recommendations revealed the increasingly pessimistic outlook of the Council regarding the world food situation. In the light of the ever more critical food shortages, especially in Africa, and of the general economic recession that had been constraining progress in development assistance, the Council called especially for increased help for the countries most seriously afflicted. In 1981 also, the Council had little reason for optimism. Its approach therefore was to commend the national food strategies adopted by over 40 developing countries, while urging them to cooperate more closely. With that object in mind, the Council had already co-sponsored special meetings for 20 African countries in November 1980 and for 21 Latin American and Caribbean countries in February 1981. The Council recommended projects requiring relatively low investment which might yield large returns, such as incentives to producers, construction projects and improvement of the transport and storage infrastructures, a rational use of energy, and the development of alternative energy sources.

After a regional consultation of seven of its African members in March 1982, the Council focused again on the particularly dire food situation in Africa at its eight ministerial session in June 1982. It discussed, *inter alia*, the plan for a developing-country-owned grain reserve and recommended certain direct measures for hunger eradication to be included in the national food strategies (now numbering over 50) of developing countries.

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ULRICH WÖLKER

WORLD FOOD PROGRAMME (UN/FAO)

1. Historical Background

The original incentive to food aid was concern over agricultural surpluses and pressure to find an outlet for them. In 1949, the → Food and Agriculture Organization of the United Nations (FAO) established a Committee on Commodity Problems (CCP) which drew up a set of principles on surplus disposal, now widely-accepted among States (→ Commodities, International Regulation of Production and Trade). A Consultative Sub-Committee on Surplus Disposal (CSD) was set up in 1954 in Washington to scrutinize surplus transactions.

In the same year, the United States decided to lessen the burden of her food surpluses in a constructive manner by supplying surplus food to → developing States. This was embodied in the Agricultural Trade Development and Assistance Act (also called "Public Law 480").

In 1960, the → United Nations invited the FAO to study possible arrangements, including multilateral measures, for mobilizing and distributing available surplus food, and called for the best possible use of food surpluses for economic development (UN GA Res. 1496 (XV); → Economic and Technical Aid).

In 1961, the United States proposed the establishment of a three-year experimental programme with a fund of US $100 million in commodities and cash, $40 million of which she was

prepared to provide under Public Law 480. The details of the proposed programme were worked out by the UN and the FAO and approved by the FAO Conference (Res. 1/61 adopted on November 24, 1961) and the → United Nations General Assembly (Res. 1714 (XVI) adopted on December 19, 1961).

After operating for three years (1963–1965) as an experimental programme, the World Food Programme (WFP) was extended on a "continuing basis for as long as multilateral food aid is found feasible and desirable, on the understanding that the Programme will be regularly reviewed before each pledging conference..." (UN GA Res. 2095 (XX) and FAO Conference Res. 4/65).

2. WFP Structure

The WFP was originally supervised by a 20-nation UN/FAO Inter-Governmental Committee (IGC) which provided guidance on the policy, administration and operation of the Programme. Following a recommendation of the World Food Conference held in Rome in 1974 and pursuant to UN GA Res. 3404 (XXX) and Res. 22/75 of the FAO Conference of November 26, 1975, the IGC was reconstituted into a Committee on Food Aid Policies and Programmes (CFA). The IGC was given the additional responsibilities of providing a forum for consultations on national and international food aid policies and programmes; periodically reviewing general trends in food aid requirements and availabilities; recommending improvements in food aid policies and programmes to governments through the → World Food Council; formulating proposals for more effective coordination of multilateral, bilateral and non-governmental food aid programmes, including emergency food aid; and periodically reviewing the implementation of the recommendations made by the World Food Conference on food aid policies. The structure, activities and procedures of the WFP are governed by General Regulations adopted by the → United Nations Economic and Social Council (ECOSOC) and the FAO Council (→ International Organizations, Internal Law and Rules).

The CFA holds regular sessions twice a year and reports annually to ECOSOC and the FAO Council. It also presents periodic as well as special reports to the World Food Council. It is composed of 30 States which are members of the UN or members of the FAO; half of its members are elected by ECOSOC and half by the FAO Council. Designation of members must take into account the need for:

> "balanced representation of economically developed and developing countries and other relevant factors such as the representation of potential participating countries, both contributing and recipient, equitable geographical distribution and the representation of both developed and developing countries having commercial interests in international trade in foodstuffs, especially those highly dependent on such trade" (UN GA Res. 2095 (XX), para. 8).

The Programme is operated by a joint United Nations/FAO Administrative Unit (WFP Secretariat) located in Rome and headed by an Executive Director who is appointed by the → United Nations Secretary-General and the Director-General of the FAO after consultations with the CFA.

3. Programme Resources and Activities

The resources of the Programme come mainly from voluntary contributions in commodities, cash or services pledged by governments. Pledging conferences are held biennially after the pledging target has been proposed by the CFA, endorsed by ECOSOC and the FAO Council, and approved by the UN General Assembly and the FAO Conference. The pledging target has been gradually increased from $100 million for the three-year period 1963–1965 to $1200 million for the biennium 1983–1984.

Apart from regular pledges, additional resources are made available to the WFP from two other sources: the Food Aid Convention (FAC) and the International Emergency Food Reserve (IEFR), established by the Seventh Special Session of the General Assembly in 1976 (Res. 3362 (S-VII)).

From the time of its inception, the Programme has provided development assistance exclusively on a project basis. On request, the Programme provides assistance for implementing self-help projects, using food as an aid to economic and social development, particularly when related to feeding and improving the nutritional conditions of the most vulnerable groups ("human resources

development") (→ International Law of Development). At the same time, it assists projects designed to increase agricultural and in particular food production and productivity, fostering labour-intensive projects and promoting rural employment and welfare ("food for work"). Assistance can also be provided for promoting world food security through the establishment and maintenance of food reserves in developing countries. Highest priority is accorded to low-income, food-deficit countries (→ International Economic Order).

Project food aid provided by the WFP is distributed directly to the beneficiaries. Food aid can thus be targeted specifically to the people in greatest need and for well-defined development objectives. The projects which the WFP supports are designed and executed by the governments themselves. For every WFP-assisted project, safeguards are established to prevent any counter-productive ("disincentive") effects on local agricultural production or commercial trade.

A portion of the Programme's resources is set aside every year for use by the Director-General of the FAO for meeting emergency food needs in cases of major disasters, natural or man-made (→ Relief Actions). This allocation may be increased by the CFA and supplemented as needed by available resources drawn from the IEFR.

Since 1963, the WFP has committed food aid valued at over US $4500 million to over 1000 development projects in 113 developing countries. In addition, the Programme has provided emergency food relief at a total cost of over $700 million in more than 500 operations. The share of food aid provided by the WFP has risen since 1970 and now amounts to over 20 per cent of total food aid.

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EBERHARD LÜHE

WORLD HEALTH ORGANIZATION

1. Origin

Nearly a century of → public health international cooperation culminated after World War II in the creation of a single, universal health organization. In 1945 the San Francisco Conference on International Organizations, acting on proposals of China and Brazil (who quoted Cardinal Spellman's words, "Medicine is one of the pillars of peace") included "health" in the → United Nations Charter (Arts. 13, 55, 57 and 62) and called unanimously for a conference to establish an international health organization as one of the → United Nations Specialized Agencies.

The → United Nations Economic and Social Council (ECOSOC) first convened a Technical Preparatory Committee of international health experts from 16 countries (with observers from the pre-existing health organizations). This Committee met in Paris in March 1946; on the basis of drafts prepared by the experts from France, the United Kingdom, the United States and Yugoslavia, it agreed, within only three weeks, on a complete set of proposals for the Constitution of the World Health Organization (WHO). Differences of opinion remained, however, as to regional arrangements – more specifically, the future of the Pan American Health Organization (PAHO).

After a brief review by ECOSOC, the proposals were put before the International Health Conference held in New York in June/July 1946 and attended by 64 governments (including non-UN members) and by the Allied control authorities for Germany, Japan and Korea. The Conference worked out the final text of the WHO Constitution, which was signed on July 22, 1946 by 61 governments (UNTS, Vol. 14, p. 185).

To bridge the gap until the Constitution's entry into force (upon 26 ratifications; see → Treaties, Conclusion and Entry into Force), the Conference, by an Arrangement with immediate effect, set up an Interim Commission composed of members designated by 18 States. This Commission was provided with a UN-funded

secretariat to (i) prepare for the permanent organization, (ii) carry out urgent international health work, and (iii) assume the functions of the previous health organizations. The functions of the Health Organisation of the → League of Nations, which upon dissolution had passed to the → United Nations, were transferred to the Interim Commission in October 1946 (cf. → International Organizations, Succession). A similar transfer of functions (and of US $3 million in funds) took place from December 1946 to April 1947 for the health sector of the → United Nations Relief and Rehabilitation Administration (which during 1943–1946, in addition to performing post-war medical → relief actions, had taken on some responsibilities for sanitary conventions and epidemiological reporting). More complex and protracted was the dissolution of the Office international d'hygiène publique and the transfer of its functions (and remaining assets) to WHO; the process, starting with a Protocol signed by governments at the New York Conference, was completed only in November 1950.

The year 1948 brought the establishment of the permanent organization. The WHO Constitution entered into force on April 7 (commemorated each year as World Health Day), and in June the first World Health Assembly opened in Geneva, chosen as the seat of WHO. The Interim Commission, which had held five sessions, was dissolved and was succeeded on September 1, 1948 by the new organization.

2. Membership

WHO is open to all States: UN members acquire membership by merely accepting the Constitution, while others can be admitted by a simple majority of the Health Assembly. Thanks to this rule, for many States WHO was the first UN agency they joined. Territories not having responsibility for their international relations can be admitted as associate members upon application by the State or authority exercising that responsibility; this possibility was widely used in the past. Membership has always been virtually universal and stands (in 1982) at 158 members and one associate member (→ Namibia).

No provision is made in the Constitution for withdrawal (but the United States reserved this right in a → declaration accepted by the first Health Assembly). The East European countries and China declared their withdrawals in 1949/1950, but the Health Assembly considered them as remaining "inactive members"; these States (except the Byelorussian and Ukrainian Soviet Socialist Republics, which remain "inactive"), when "resuming" membership some years later, agreed to pay a stipulated part of the contributions due for the intervening period. Nor is any provision made for expulsion; an amendment of 1965 to Art. 7 of the Constitution allowing expulsion for deliberate → racial discrimination has not yet obtained enough ratifications to enter into force.

3. Organs

The central organs of WHO are the Health Assembly, the Executive Board and the Secretariat. The Assembly, composed of delegates of all members (associate members participate without voting rights), meets in regular session once a year (→ Voting Rules in International Conferences and Organizations). The Executive Board is composed of 30 persons designated by as many member governments (selected by the Assembly on an equitable geographical basis), but exercising their mandate on behalf of the whole membership. The Board submits proposals to the Assembly and gives effect to the latter's decisions; it also has authority to deal with events requiring immediate action. Both the Assembly and the Board may establish committees. Apart from sessional and *ad hoc* committees, there is a Programme Committee of the Board, and an Advisory Committee on Medical Research. Numerous expert committees convened on a one-time basis provide scientific advice in special technical fields. The Secretariat (composed of 5300 scientific and administrative staff throughout the world) is headed by the Director-General appointed for renewable five-year periods by the Assembly on the nomination of the Board.

A characteristic of WHO's Constitution is the marked degree of regionalization. WHO has "regional organizations" consisting of intergovernmental regional committees and regional offices headed by Regional Directors (appointed

by the Board in agreement with the regional committee concerned). Six such regions have been established by the Assembly, mainly along geographical lines: Africa, the Americas, the Eastern Mediterranean, Europe, South-East Asia, and the Western Pacific. Two of them are atypical: For the Americas, PAHO, which under the compromise embodied in Art. 54 of the Constitution was to be "integrated" with WHO in due course, still retains its separate identity and independent funding but serves as WHO's regional organization under an agreement of 1949. In the Eastern Mediterranean, which includes, *inter alia*, most Arab countries and Israel, meetings of the full regional committee have proved impossible since 1954 and have been replaced by a system of two sub-committees. Cooperation in this region has been further affected by the dispute over whether the regional office should be moved from Alexandria, a dispute which was submitted to the → International Court of Justice (→ Interpretation of Agreement of 25 March 1951 between WHO and Egypt (Advisory Opinion)).

4. *Decision-Making*

Decisions of the Assembly, in many areas (e.g. programming and budgeting) prepared by the regional committees and the Board, establish the policies for WHO's own work. The Constitution also provides for norms or standards for member governments in the form of conventions or agreements, regulations, or recommendations.

In practice the convention-making procedure (Arts. 19 and 20), which requires a two-thirds majority in the Assembly and subsequent ratification by members, has never been applied.

Regulations may be adopted in certain fields specified in the Constitution (Arts. 21 and 22); once adopted by the Assembly (by simple majority), they enter into force for all members except those rejecting them or making reservations ("contracting out") within a given period from → notification (→ International Legislation). Two such regulations have been enacted and have achieved virtually universal effect: the International Health Regulations of 1969 (replacing the pre-war sanitary conventions and 1951 Regulations) and the Nomenclature Regulations of 1967 (re-casting those of 1948 and establishing together with the periodically revised "International Classification of Diseases" the basis for uniform morbidity and mortality statistics).

Generally, WHO has preferred to set norms or standards by non-binding recommendations (by simple majority) which entail a duty of members to report on any action taken (Arts. 23 and 62).

Normative decisions of a different kind are amendments to the Constitution, which must be approved not only by a two-thirds majority in the Assembly, but also ratified subsequently by two-thirds of the members; they have been rare, entering into force only after many years.

5. *Financing*

The regular biennial budget is approved by a two-thirds majority of the Assembly and funded by members assessed under a scale of contributions following that of the UN (→ International Organizations, Financing and Budgeting). The regular budget of WHO (amounting to US $484 million for 1982–1983) is supplemented by additional contributions for members of PAHO and of the International Agency for Research on Cancer (IARC) and by voluntary contributions made by governments, foundations, and others either directly to WHO or through other UN agencies (totalling $429 million for 1982–1983).

6. *Objectives; Achievements*

The Constitution (Art. 1) proclaims as WHO's ultimate objective "the attainment by all peoples of the highest possible level of health". Faced with the magnitude of health problems, the inadequacy of resources and their inequitable distribution, WHO seeks to set priorities (primary health care), to focus attention on → developing States (e.g. the prevalence of technical cooperation and the call for a transfer of resources to them) and to fix a more concrete target, i.e. the attainment by all, by the year 2000, of a "level of health that will permit them to lead a socially and economically productive life" (Res. WHA 30.43 adopted by the 30th Assembly in 1977). Quantified minimum indicators for that target have been established (e.g. safe drinking water within 15 minutes walking distance; immunization of all children against six major diseases; local availability of at least 20 essential drugs; trained personnel attending pregnancy and childbirth for the whole population; birth weight of at least 2.5 kilograms; infant mortality below five per cent;

life expectancy over 60 years). To reach such levels by the year 2000, an estimated additional US $12.50 annually per inhabitant of the developing countries would have to be spent. This represents world-wide a total of $50 000 million. Even if 80 per cent of this sum could be found by the developing countries, external funds would have to be tripled. Therefore, WHO is intensifying efforts with members for further "cooperation among themselves and with others to promote and protect the health of all peoples" (Preamble to the Constitution).

WHO achievements include the world-wide eradication of smallpox in an intensified campaign from 1967 (when the disease caused ten to fifteen million cases with some two million deaths) until the last case in 1977. The elimination of the disease permitted universal abolition of vaccination (the International Health Regulations were amended in 1981) and the resultant savings, particularly in the industrialized countries, exceed the cost of the campaign. So far, WHO has been less successful in malaria control (40 of 143 malarious countries have been freed of the disease). However, extensive research towards a safe malaria vaccine is in progress under WHO sponsorship. Simple and effective treatment of diarrhoeal diseases has been developed; WHO's programme for 1984–1989 foresees reduction of childhood deaths from these diseases by 1.5 million annually. There are also localized achievements of great significance. For instance, since 1974 transmission of onchocerciasis in the River Volta Basin has been interrupted in 85 per cent of the area covered, which thus became reopened to economic development.

WHO also addresses problems prevalent in industrialized countries (e.g. control of environmental health hazards, accident prevention, health of the elderly, prevention of stress-related diseases, scientific contributions to drug abuse control). Intensive research on the causes of cancer is carried out by the IARC, established in 1965 by WHO, but forming a separate entity governed and financed by twelve major industrialized countries. Of equal benefit for developing and developed countries are WHO's programmes to make available by 1989 new safe and accepted methods of fertility regulation for use in family planning and to promote widespread training in family planning. Such programmes are of obvious importance beyond the field of health and constitute a contribution to conditions of world stability essential for the maintenance of peaceful and friendly relations among nations.

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

1. Foundation and Legal Basis

On July 14, 1967 in Stockholm, the World Intellectual Property Organization (WIPO) was founded as an international organization by a multilateral inter-State → treaty. Coinciding with the foundation of WIPO, the Stockholm Conference also undertook a revision of the 1833 Paris Convention for the Protection of Industrial Property which set up the Paris Union (→ Industrial Property, International Protection) and a revision of the 1886 Berne Convention for the Protection of Literary and Artistic Works, which set up the Berne Union (→ Literary and Artistic Works, International Protection). Although they retain their essential autonomy, the two Unions are closely connected with the structure of WIPO.

The main objective of WIPO is "to promote the protection of intellectual property throughout the world" (WIPO Convention, Art. 3). This entails cooperation with States, other international organizations, and the Unions. The latter term comprises most importantly the Paris and Berne Unions but also includes a number of other Special Unions within the protection of intellectual property régime (Art. 2(vii)); the term "intellectual property" is very broadly defined (Art. 2(viii)).

The functions of WIPO can be derived from its objectives. They consist, *inter alia*, of carrying out the administrative tasks of the Paris and Berne Unions, and those of other unions based on special agreements (see for example, Art. 19 of the Paris Convention); preparing new international agreements for the protection of intellectual property (including proposals for the revision of existing agreements); and, where States request it, providing legal-technical assistance.

2. History

The structure of WIPO and the way it functions can only be understood in the light of its history, which in turn must largely be seen as reflecting the organizational history of the Paris and Berne Unions.

The Paris and Berne Conventions (which, with the numerous revisions undertaken to accommodate changing requirements, still apply today) are creatures of international functionalism, which emerged in the last third of the 19th century (cf. → International Administrative Unions). Here, the basic assumption is that there are world-wide subject-matter interests independent of national → boundaries, and which in the various States are so similar and so free from political friction, that they can be said to be self-regulating and may be regulated by consent. Cooperation should be as universal as possible, not necessarily between States as political units but rather as units of administration, which usually coincide, however, with a State's territory.

Continuously operated international offices for the respective Unions were established in Berne and were charged with fulfilling the tasks laid down in the Conventions. After the initial period they were merged into one which was internationally known as the Berne Bureau.

After the founding of the → League of Nations, attempts were made, under Art. 24 of the League Covenant, to subordinate the "Berne Bureau" to the League. This aim proved incapable of attainment. However, after a few years, a treaty of mutual cooperation on the basis of equality was concluded between the General Secretariat of the League and the Berne Bureau.

In the 1950s, attempts were made to include the Paris and Berne Unions within the → United Nations system, but the successful old arrangement was found preferable to an experiment. It was only in the 1960s, with the entry of many new States and the consequent changes in the composition of the majority in the → United Nations General Assembly that the UN's *de facto* preeminence became a live issue. Above all, the view prevailed that a new → international economic order was required to further the interests of the → developing States.

The new circumstances soon manifested themselves in changes. The Berne Bureau was "internationalized", losing that part of its character that had been distinctively Swiss, and its very title disappeared in favour of its new official name, "Bureaux Internationaux réunis pour la propriété intellectuelle (BIRPI)". Finally, the newly reorganized Berne Bureau was moved as BIRPI to

Geneva to enable closer cooperation with the UN organizations already present there.

A parallel development was the growing criticism of the Unions themselves from within the ranks of the developing States. It was claimed that the Unions served only the interests of the industrialized countries and that the opportunities for member States to take part in the preparations towards the revision of the Conventions were insufficient, due to the procedure whereby the necessary drafts were prepared under the auspices of the host country where the revision conference was due to take place (→ Treaties, Revision). Above all, the claim was made that in general the Unions would have to accept the new realities within the UN (e.g. simple majority voting in the General Assembly). In particular, the developing States urged that organs be established for the discussion of the requirements surrounding the concept of intellectual property.

These criticisms received attention at the revision conferences in Lisbon (1958) and also in Stockholm (1967). By the time of the Stockholm Conference at the very latest, both the Paris and the Berne Unions had acquired the characteristics of an international organization. Without more, the Unions could have been accommodated within the UN system. However, one desired a fresh solution in the form of a new organization which would generally serve to further the protection of intellectual property but where States which were not Union members would have the opportunity of participating and where the interests of the developing countries could be given precedence. It was nevertheless clear that the autonomy of the Unions would have to be preserved, even though an organizational comingling between WIPO and the Unions was intended. This may be seen upon an examination of the structure and functions of WIPO.

3. Membership

Membership in WIPO is open to any State which is a member of one of the Unions or to any other State which is a member of the UN, one of its Specialized Agencies, or the → International Atomic Energy Agency, or which is a contracting party to the Statute of the → International Court of Justice, or which is invited by WIPO's General Assembly to become a party to the Convention. The provisions avoid the problems associated with statehood (→ State). The division of the membership into two categories, i.e. Union and non-Union members, is also reflected in the organizational structure.

The grounds for admitting non-Union members to WIPO membership, given that the Unions are closely concerned with the protection of intellectual property, can be stated as follows: Intellectual property is now generally regarded as a key factor in economic prosperity and progress; intellectual property protection thus directly affects the interests of non-Union States, and it is proper that they should have access to information and a chance of exercising influence while this protection is undergoing development.

4. Organs; Voting

The Organization basically follows what has become the classical formula. It comprises an assembly of all the members (but see *infra*) which is the central organ, although it meets relatively infrequently; a council, a small organ made up of elected representatives from the membership, which is active on a more frequent basis and which is entrusted with the actual directive functions; and a secretariat (→ International Secretariat) which acts as the permanent organ, running the day-to-day business and preparing conferences under a director-general and organized along bureaucratic lines.

WIPO is, however, atypical in having two groups of members (→ International Organizations, Membership). Thus it has not only one but two assemblies which conform to the classical pattern and which, in principle, are of equal weight; namely, under Art. 6 of the WIPO Convention, the General Assembly (an assembly of all the members who also belong to at least one of the Unions) and, under Art. 7, the Conference (an assembly of all contracting States to the WIPO Convention regardless of whether they are members of a Union or not). Thus, a State belonging to the Conference need not have either legal ties to a Union or belong to any specialized system of protection. The group forming the Conference is thus the more extensive of the two.

It is noteworthy, however, that at the time WIPO was established, the question whether the decision-making process of its organs should be

by unanimity or by majority vote gave rise to no controversy. As if it went without saying, majority decision-making was adopted along the procedure followed by the UN organs. The fact that the Unions observe the principle of unanimity, and that this principle had proved its merit in practice, is not reflected in the decision-making process of WIPO.

The council, in the classical organizational formula, is represented by the Coordination Committee (Art. 8). Its composition is governed by complex rules. The only States that qualify for membership are those which are also members of the Executive Committees of either the Paris or Berne Unions, or both. Thus here, the close association between WIPO and the Unions has been achieved, if at the cost of a balance favouring the Unions where the functions of WIPO are concerned, given that the Coordination Committee is responsible for a number of important tasks which are enumerated in Art. 8(3).

The permanent secretariat in WIPO is called the International Bureau. Art. 9 says relatively little about the actual Bureau and its tasks and considerably more about the Director-General, who is the Organization's chief executive, responsible for representing the Organization, preparing draft budgets, participating in the meetings of all the organs, appointing staff and other tasks of this nature. He is also responsible for managing all the ongoing activities. He is governed by the directions of the General Assembly, i.e. the assembly of members who also belong to at least one Union. This again entails that the balance of interest is weighted on the side of the Unions and Union members.

5. Functioning

All the organs of WIPO are equally obliged to follow WIPO's general objectives. At the same time, there are functional differences which reflect the interplay which takes place within the Organization. This is characterized by the provision granting a general competence to each of the organs (a kind of positivist implied powers principle; → International Organizations, Implied Powers), which means that each organ is competent to take all measures that serve to attain the objectives laid down by the Convention. As the objectives (Art. 3) and functions (Art. 4) laid down in the Convention are widely drawn, the possibilities for further development in these areas are unusually wide.

It is not necessary to enumerate here the particular tasks laid down in the Convention for the General Assembly (Art. 6) and for the Conference (Art. 7) respectively. Of greater importance are the existing differences, which determine the balance within the Organization. Thus, for instance, it is the General Assembly which appoints the Director-General of WIPO. Since, moreover, the Coordination Committee nominates the candidate, this highly important matter is entirely within the competence of States who are also Union members. Apart from this, the General Assembly reviews the work of the Coordination Committee and gives it instructions; it also adopts the Organization's budget and its financial regulations.

All these provisions hardly, if at all, affect the Unions as such, since they only affect WIPO and regulate, above all, WIPO's internal affairs. This accords with the intentions of the member States of the Unions, who insisted on the continuing autonomy of the Unions.

As far as the Conference (the assembly of all contracting parties to WIPO) is concerned, the principle that the autonomy of the Unions must be respected is expressed in Art. 7(2) (i). This is of particular importance, as it becomes apparent from the list of functions (i.e. not only under the provision governing general competence) that the Conference can raise questions of general interest bearing on the area of intellectual property. This is also the task of the Unions through their special advisory organs (e.g. Arts. 13 and 14 of the Paris Convention dealing with the Union's Assembly and Executive Committee respectively). Moreover, this is well within the competence of the WIPO General Assembly. Thus it seems as if a conflict of jurisdiction was programmed into the Organization to create a possibility for the non-Union members that they might, and thus that they would, exert influence on Union matters.

In this case, however, the jurisdiction of the Coordination Committee (Art. 8) would apply, as its function, *inter alia*, is to strike a balance within WIPO. Thus, for example, it advises on all important questions between two or more Unions, or between one or more Unions and WIPO. The

Coordination Committee's standing rests on the fact that it is responsible for drafting the General Assembly's agenda and that it participates in drawing up the budget. No difficulties worth mentioning appear to have emerged in this area over the years since the foundation of WIPO.

The International Bureau (WIPO Convention, Art. 9) is the secretariat of WIPO and, as far as its organizational identity is concerned, also of the Unions. Accordingly, the Director-General, the head of the secretariat, is also the Director-General of the Unions. Even if the International Bureau is not to be seen as possessing the characteristics of an independent organ, i.e. that its legal position is not consistent with those of the General Assembly, Conference and Coordination Committee, it must be recognized that it has a noteworthy function which embraces and brackets WIPO and the Unions together. Art. 9 above all regulates the function of the Director-General; the tasks to be performed by the secretariat are to be found in the conventions upon which the Unions are founded. These tasks developed as those of the "Berne Bureaus" and have now entered, for example, the organizational law part of the Paris Convention (Paris Convention, Art. 15). Thus they are tasks originating from the Unions and not from the WIPO Convention.

Of central importance is the legal-technical assistance provided by the International Bureau, such as the preparation of treaties, the drafting of model laws, the provision of specialist information, the monitoring of legal developments in the various national jurisdictions in all relevant matters of general importance as well as the determination of the degree to which all the general treaties are being observed. Despite the nomenclature used, it would be completely wrong to characterize these sorts of tasks as purely technical. This, in fact, is easily recognized where the preparation of work such as the meetings of the organs and their agenda are concerned. It is seen even more unmistakably and importantly in the participation in the preparation of the revisions of the Conventions, which are of the utmost importance in the lives of the Unions, and where the changing requirements of the international protection of intellectual property have to be provided for.

It was the revision process that met with such heavy criticism before the Stockholm revision of 1967. To all intents and purposes, the process was the prerogative of the State in whose territory the particular revising conference was to take place in the form of a diplomatic conference, because this State was charged with making the preparations. In 1967 this State was Sweden, and while no one doubted Sweden's objectivity, the developing countries in particular complained, *inter alia*, that only the economically advanced States could actually exert influence and that what was missing was a suitable organ for expressing views and taking decisions during the preparation phase of the revision process. These objections were met by additions to the organizational provisions in the conventions, and also by incorporating the solutions into the newly formed WIPO. Thus a complete system of intellectual property protection was created, consisting of WIPO and all the Unions, which in turn, despite the autonomy-entrenching provisions favouring the Unions, may be seen as a sub-system of the UN system.

6. Financing

Despite all its successes in intellectual property matters, the existence of the Berne Bureau was repeatedly jeopardized by financial difficulties. Such difficulties had to be avoided from the outset for WIPO.

Art. 11 of the WIPO Convention regulates the Organization's financing. The provision is somewhat complicated, not the least because there are two groups of contributing members.

WIPO receives contributions from the Unions (which come from the contributions of the member States of the Union) and from WIPO members who do not belong to any of the Unions. Accordingly, there are two separate budgets, one for the common expenses of the Unions, the other for those of the Conference. The budget for the common expenses of the Unions is financed by contributions to the Unions (which are determined by reference to the interest a given Union's Assembly has in the common tasks performed), contributions and charges for certain services performed by the International Bureau, and by sales receipts and royalties from publications. The budget of the Conference is financed by the contributions of contracting States who do not belong

to any Union, and by sums made available to the Conference budget by the Unions. Also added are sums received for services rendered by the International Bureau in the field of legal-technical assistance and funds from other sources.

As is the case in the Unions (where, for example, under Art. 16 of the Paris Convention there are seven classes of contributions which are used as the basis of assessment for Union contributions), in WIPO there are three classes used to establish the contributions of States who belong to none of the Unions. Here each State, having acquired membership in WIPO, itself determines its appropriate contribution class. Later change to another class is possible.

The exercise of voting rights in the organs of WIPO is dependent on the payment of contributions (this is also the case for Union contributions). Each organ may, however, decide itself whether the right to vote ought still to be retained in a given case on the grounds that the arrears resulted from exceptional or unavoidable circumstances. This provision is of particular importance for the poorest of the developing countries, making their participation possible when problems are being handled which are of special importance to them.

All the financial arrangements mentioned, taken together, assure WIPO a satisfactory basis which guarantees its effectiveness.

7. WIPO in the UN System

Under an agreement dated December 17, 1974 between WIPO and the UN on the basis of Arts. 57 and 63 of the → United Nations Charter, WIPO has been granted the status of a → United Nations Specialized Agency, and thus belongs to the UN "family" or system.

The existing relations between the Unions and WIPO came into being as a result of the relevant provisions contained in the WIPO Convention. There are no treaties governing these relations, although such treaties would be possible. WIPO has become the bridge between the UN and the Unions. Thus, the result intended earlier under Art. 24 of the League of Nations Covenant has been achieved, albeit now with a reservation of autonomy in favour of the Unions. The objections which had prevented Art. 24 of the Covenant from becoming effective were thus accommodated. To what extent, however, the guarantee contained in the Convention will prevent the UN system from penetrating through to the Unions remains an open question.

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HANS BALLREICH

WORLD METEOROLOGICAL ORGANIZATION

1. History

International cooperation in meteorology dates back to the first non-governmental international meteorological conference at Brussels in 1853. On August 14, 1872 at Leipzig, 52 directors of

meteorological services met in their personal capacities and prepared the way for holding the first international congress to meet at Vienna in the following year; it was attended by representatives of 20 governments. This congress created the Permanent Committee, the ancestor of the present Executive Committee of the World Meteorological Organization (WMO), and gave it the basic task of dealing with international meteorological problems. It was also entrusted with the preparation of the second international meteorological congress which was held in Rome in 1879. This congress instituted an International Meteorological Committee with responsibilities analogous to the Permanent Committee which it superseded. The new Committee originally intended to report on its activities to a third congress, but was unable to do so as none was convened. It was not until the creation of the WMO in 1950 that international meteorological cooperation returned to the inter-governmental level.

At the first conference of directors of meteorological services in Munich in 1891, a structure was established, consisting of a Conference of Directors, a regenerated International Meteorological Committee (IMC) and an Executive Bureau. The main characteristic of the Conference was that those who participated did so only in their roles as heads of services. The system – which could be called the International Meteorological Organization, even though that name only came into formal use at a later date – lasted until the outbreak of World War I. During the period 1891–1914, the organization's most notable accomplishment was the establishment and further development of the Technical Commissions which constituted the operational structure of the Organization. They did not greatly differ from the WMO's Technical Commissions of today.

Truly international meteorological cooperation virtually ceased from 1914 until 1919. During the subsequent inter-war period the two great technological developments of radio and aviation were to begin a kind of permanent revolution in meteorology. Not just the structure, but also the status of the International Meteorological Organization, now became increasingly important as governments became more and more aware of the applications of meteorology and its impact on daily life, and particularly on economic activities. However, the outbreak of World War II was to subdue this development for almost seven years.

However, governments as well as meteorologists had differing views on whether international cooperation in meteorology should take place at an inter-governmental or a non-governmental level. The conflict was partly, though temporarily, resolved by a compromise at the IMC meeting in Vienna in 1926 with the creation of a small secretariat. The inter-war period did leave an important legacy in the progressive establishment of a system of Regional Commissions, which provided the model for its successor network of the WMO Regional Associations; this system had shown its value as an instrument within the International Meteorological Organization framework to assure better implementation of the Organization's resolutions in remote parts of the world.

2. WMO Structure and Functions

The most important post-war task of the International Meteorological Organization was the transformation of the organization into an intergovernmental body, pursuant to the unanimous adoption of the World Meteorological Convention (UNTS, Vol. 77, p. 143) by the Conference of Directors held in Washington, D.C. in 1947. The constituent bodies of the new organization were to be: the Congress, the supreme decision-making body of the WMO, composed of delegates representing member governments, and convened at intervals not exceeding four years; the Executive Committee, composed of members *intuiti personae* and convened at least once a year; the Regional Associations; and the Technical Commissions.

To carry out its new and larger tasks, greater responsibilities had to be given to an enlarged technical and scientific secretariat, presently located in Geneva. The Convention came into force on March 23, 1950. The Conference also decided to seek affiliation of the WMO with the → United Nations, which resulted in 1951 in an agreement that recognized the WMO as a → United Nations Specialized Agency.

The main activities of the WMO are carried out under the World Weather Watch Programme, the

World Climate Programme, the Research and Development Programmes, the Hydrology and Water Resources Development Programme, and the Education and Training Programme. In addition, the Technical Co-operation Programme of the WMO covers all the activities of the organization aimed at giving assistance to → developing States in the training of personnel and the establishment and expansion there of meteorological and hydrological facilities. The WMO has established agreements and working arrangements with several UN Specialized Agencies as well as with various other inter-governmental and non-governmental organizations.

In the environmental field, the WMO is working in close cooperation with the → United Nations Environment Programme in the execution of environmental projects with important meteorological and hydrological aspects, such as those relating to the programmes of → weather modification (→ Environment, International Protection). In addition, full advantage is being taken of the cooperation with these organizations to enable efficient pooling of resources needed to pursue the WMO Tropical Cyclone Programme, an international effort towards mitigating the disastrous effects of tropical cyclones and associated storm surges (see regarding collection of data: → Inmarsat; → Intelsat; → Satellites in Space).

The WMO budget for 1980–1983 amounts to US $74 400 000 and is financed by contributions from members on a proportional scale of assessment (→ International Organizations, Financing and Budgeting). The WMO receives further executive agency financing under the → United Nations Development Programme for implementing a number of technical assistance projects.

Membership of the organization is open to States, territories or groups of territories maintaining their own meteorological services, as defined by Art. 3 of the Convention (→ International Organizations, Membership). The total membership on August 1, 1982 comprised 151 States and 5 territories or groups of territories.

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MARC PEETERS

WORLD TOURISM ORGANIZATION *see* Tourism

LIST OF ARTICLES*
FOR THE ENTIRE ENCYCLOPEDIA

*This list is subject to minor changes. A number in brackets following an article shows the instalment in which it has appeared.